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Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 17

JESSE M. CALHOON, AS PRESIDENT, OR HERBERT W. PETERS, AS SECRETARY-TREASURER OF DISTRICT NO. 1 NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, PETITIONER,

vs.

RAYMOND H. HARVEY, ET AL., INDIVIDUALLY AND ON BEHALF OF OTHER PERSONS SIMILARLY SITUATED.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 20, 1963
CERTIORARI GRANTED JANUARY 20, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 688

JESSE M. CALHOON, AS PRESIDENT, OR HERBERT W. PETERS, AS SECRETARY-TREASURER OF DISTRICT NO. 1 NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, PETITIONER,

vs.

RAYMOND H. HARVEY, ET AL., INDIVIDUALLY AND ON BEHALF OF OTHER PERSONS SIMILARLY SITUATED.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. A]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Docket

63 Civ. 2401

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

vs.

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1 Marine Engineers Beneficial Association, AFL-CIO.

For plaintiff: Burton H. Hall, 136 Liberty Street, NYC.

[fol. B]

DOCKET ENTRIES

Date	
Aug. 12—63	Filed complaint and issued summons
Aug. 15—63	Filed summons and return. Served deft 8-13-63
Aug. 15—63	Filed show cause order to enjoin defts. etc. ret/8/20/63.
Aug. 15—63	Filed memorandum in support of pltffs. motion for preliminary injunction.
Aug. 19—63	Filed show cause order to dismissal complaint. ret/8/20/63.
Sept. 3—63	Filed affdvt. of Jesse M. Calhoon in opposition
Sept. 3—63	Filed affdvt. of Burton H. Hall in opposition
Sept. 3—63	Filed memorandum of deft. Union in support of its motion
Sept. 3—63	Filed Opinion #29,157—Motion to dismiss is granted and the application for a preliminary injunction is denied. This constitutes findings of fact and conclusions of law—Submit order on notice—Feinberg, J.

Date

Sept. 4—63 Filed order denying application for preliminary injunction & dismissing complaint for lack of jurisdiction—Feinberg, J.—Judgment entered—Clerk ent. 9-5-63

Sept. 5—63 Filed pltffs' notice of appeal—mailed copy to Pressman & Scribner

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 2401

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, Marine Engineers Beneficial Association, AFL-CIO, Defendant.

COMPLAINT—Filed August 12, 1963

I.

Plaintiffs bring this action under Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Sec. 401, et seq., hereinafter referred to as the LMRDA. Jurisdiction of this action is conferred upon the Court by Section 102 of the LMRDA, 29 U.S.C. Sec. 412.

II.

Plaintiffs bring this action on their own behalf and on behalf of all other similarly situated members of defendant District No. 1, National Marine Engineers Beneficial As-

sociation (hereinafter referred to as District No. 1, NMEBA) to protect the right of all such members, including plaintiffs, to vote and to nominate candidates in elections of defendant.

III.

Defendant District No. 1, NMEBA, is and at all times hereinafter mentioned has been a labor organization engaged in an industry affecting commerce within the meaning of the LMRDA and the recognized representative of employees of employers engaged in an industry affecting commerce within the meaning of the LMRDA and a local [fol. 2] labor organization or subsidiary body chartered by a national labor organization, which is representing employees of such employers within the meaning of the LMRDA. Defendant is and at all times hereinafter mentioned has been an unincorporated association composed of approximately 6000 members, who are employed as marine engineers on vessels sailing to or from ports on the Atlantic and Gulf coasts of the United States. Defendant maintains its principal office at 17 Battery Place, in the City, County and State of New York and within the jurisdiction of this Court.

IV.

Plaintiffs are members, and each of them is a member, of defendant District No. 1, NMEBA; and each plaintiff has been a member in good standing, and is now a member in good standing, of defendant at all times hereinafter mentioned.

V.

Jesse M. Calhoon is President and Herbert W. Peters is Secretary-Treasurer of defendant; and each of them held such office at all times hereinafter mentioned.

VI.

Defendant District No. 1, NMEBA, came into existence on or about January 1, 1961. It was governed at such time and is still governed by a District Executive Committee

(hereinafter referred to as the DEC) composed of officials of various branches of defendant.

VII.

At the time of defendant's formation, as above set forth, the DEC was formed and composed of officials of the various locals whose members came within the jurisdiction of defendant.

VIII.

There has at no time been any general election for officers [fol. 3] of defendant or for members of the DEC, save for an election held by defendant to fill two vacancies, to wit: the offices of branch agent for Jacksonville, Florida, and Houston, Texas. Save for the two persons holding such branch agent offices, all the members of the DEC and all officers of defendant hold such office or membership on the DEC by reason of appointment or co-optation or some device other than popular election.

IX.

At or about the time of defendant's formation as above set forth, the DEC issued and declared a set of bylaws for the internal operation and government of defendant, hereinafter referred to as the District Bylaws. The said District Bylaws have never been submitted to membership vote, referendum or approval, but were "promulgated" or declared to be in effect by the DEC without any submission to membership approval. The said District Bylaws are in effect de facto and govern the internal operation of defendant insofar as they are not contrary to the LMRDA, or to any other law or public policy.

X.

Defendant is a subsidiary body chartered by the National Marine Engineers Beneficial Association, hereinafter referred to as National. National is governed in its internal operations by a constitution (hereinafter referred to as the National Constitution) insofar as the same is not contrary to the LMRDA, or to any other law or public policy.

XI.

The National Constitution, as amended, contains an appendix setting forth minimum requirements for district constitutions, and also contains a provision, Article X of the National Constitution, which governs all districts of National, including defendant.

[fol. 4] XII.

At all times prior to the formation of defendant, members of National were permitted and enabled and of right could nominate for office of subsidiary associations of National any person who met the qualifications for office, such qualifications being limited to a two-year period of membership in good standing, a requirement that the candidate not be employed as a salesman for a company in the marine field, a requirement that the candidate not be a member of a totalitarian organization, and a requirement that the candidate have his "primary occupation" as a marine engineer.

XIII.

The District Bylaws deprive members of defendant of their right to nominate persons other than themselves. Under the District Bylaws, the only candidate whom a member is permitted or allowed to nominate is himself; and the practice of defendant and of defendant's officers prohibits the member from nominating himself for more than one District office.

XIV.

In or about March 1963, National further restricted and infringed the right of members of defendant to nominate candidates for District office. At the said time, National amended the National Constitution, Article X, Section 9 thereof, to provide that no member could be eligible for nomination to or election as a fulltime elective office of a District unless he had been a member of National for five years and had served 180 days or more days of sea time on vessels covered by collective bargaining agreements with National or its subsidiary bodies in each of two of the three

years preceding nomination, the said requirements not applying to incumbent officials.

[fol. 5] XV.

In or about March 1963, National further infringed the rights of members of defendant to nominate candidates for the office of District President by amending the said provision, Article X, Section 9, to provide that a candidate for the office of District President must have previously been elected and served as a full time and paid official of a Subordinate Association, District or other organization affiliated with National.

XVI.

The said provisions of the District Bylaws and amendments to the National Constitution, as amended, violate and are contrary to the LMRDA, in that they infringe the right of members of defendant District No. 1, NMEBA, to nominate candidates in elections of defendant, which right is guaranteed to each member of defendant, and to each plaintiff, by Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1).

XVII.

Article X, Section 3(g) of the District Bylaws, as amended, provides as follows: "The District President, subject to the approval of the District Executive Committee, shall designate an Impartial Administrator to supervise the conduct of the election. The Duties of such Impartial Administrator shall include: the mailing of the ballots, assuring the secrecy of and non-accessibility to the depository during the election, the mailing of duplicate ballots on written requests from members, supervising the ballot collection, and the tallying procedure with the Tallying Committee and to take such other measures as he may deem necessary to assure a fair and impartial election."

XVIII.

Insofar as the said Article X, Section 3(g) of the District Bylaws is not contrary to or in violation of the LMRDA

or of any other law or public policy, the said provision [fol. 6] defines and prescribes certain elements of the right to vote guaranteed to members of defendant by Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1).

XIX.

The District Bylaws and the aforesaid provisions of the National Constitution provide that defendant District No. 1 shall hold its elections for officers and members of the DEC every three years, as required by Title IV of the LMRDA, 29 U.S.C. Sections 481 et seq. The said provisions, however, state that the first three year period is to begin in 1960, the year prior to defendant's formation. As a result, the first election for officers and members of the DEC of defendant, save for the election held as aforesaid to fill two vacancies, will be held in 1963 and future elections of defendant will be held at three year intervals thereafter.

XX.

Defendant has not afforded or permitted its members, or any of them, any opportunity to nominate persons other than themselves for any office in the said 1963 elections. Members seeking to make nominations with regard to such elections have been required to submit their own names and only their own names for such nomination. Defendant has further deprived members of defendant of their right to nominate any person for a second office and has insisted and required that any person seeking to nominate a candidate or candidates for more than one office would be limited to nominating himself for one office and would be prohibited from nominating any person for the second office.

XXI.

The said practices and requirements and refusals of defendant and of its officers to permit its members to nominate candidates for more than one office violates Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1) by infring- [fol. 7] ing the right of each member to nominate candidates in elections of defendant, which right is guaranteed to each member by the said Section 101(a)(1).

XXII.

Plaintiffs have each of them protested the aforesaid infringements of their right to nominate candidates and have made every effort reasonably available to them to claim and exercise their right to nominate candidates. Plaintiffs have each of them submitted their nominations of themselves for the offices of Patrolmen of defendant, pursuant to the District Bylaws and the National Constitution. Plaintiffs' nominations of themselves have each been denied on the ground that they did not meet the sea time requirement aforedescribed. Plaintiffs Harvey and Shapiro have appealed from such denial to the membership voting by hand at branch meetings of defendant, that being the only method of appeal open to them within defendant and/or within National, and their appeals have been denied.

XXIII.

The provisions of the District Bylaws aforedescribed and the amendments to the National Constitution aforedescribed are unreasonable insofar as they infringe the right of members to nominate candidates for offices of defendant; and the eligibility requirements imposed by the said amendments to the National Constitution are unreasonable and oppressive in that they deprive the vast majority of members of defendant of any opportunity and of all right to nominate candidates for the office of District President, which office is the chief office of defendant, and in that they deprive a large proportion of defendant's members of the right to nominate any candidate for any office in defendant's elections.

[fol. 8]

XXIV.

Defendant and its officers have not and, on information and belief, will not designate any Impartial Administrator to supervise the 1963 elections above described or to supervise any future elections of defendant, unless this Court orders them to do so. By their failure to designate such an Impartial Administrator, defendant has infringed and will continue to infringe the rights of all members to vote in

elections of defendant, which right is guaranteed to each such member by Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1), and has violated and will continue to violate Section 3(g), of Article X, of the District Bylaws, above set forth.

XXV.

Plaintiffs have protested the failure of defendant to designate an Impartial Administrator, in every reasonable manner open to them, and have exhausted every reasonable method of appeal open to them within defendant and/or within National.

XXVI.

Unless otherwise ordered by this Court, defendant and its officers will continue to infringe the right of plaintiffs and of all other members of defendant to nominate candidates and to vote in elections of defendant, and by so doing will cause plaintiffs and all similarly situated members of defendant to suffer grievous and irreparable injury and the loss of valuable and material rights for which there is no adequate remedy at law.

XXVII.

Plaintiffs have at all times herein mentioned complied with the obligations imposed upon them by law and by all rules and regulations governing the internal affairs of National and of defendant and of all subordinate or subsidiary organizations of National and have sought by all means available to them to achieve redress for the wrongs done and for the infringement of their rights as above set forth, [fol. 9] and have exhausted all reasonable hearing procedures within defendant and/or National available to them.

Wherefore, plaintiffs pray for judgment as follows:

1. permanently restraining and enjoining defendant, its officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them from conducting or causing to be conducted any election, and from mailing or causing to be mailed, any ballots to

be used or purporting to be used in any election of defendant, unless and until defendant has afforded to each of its members a fair opportunity to nominate any persons meeting fair and reasonable eligibility requirements for any or all offices to be filled by such election;

2. permanently restraining and enjoining defendant, its officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them from conducting or causing to be conducted any election, and from mailing or causing to be mailed, any ballots to be used or purporting to be used in any election of defendant, unless defendant or its officers have theretofore designated and appointed a person impartial in all respects with regard to such election to act as Impartial Administrator over such election pursuant to Article X, Section 3(g) of the District Bylaws;

3. directing defendant to afford to each and to all of its members a fair opportunity to nominate candidates for all offices to be contested in any and all elections of defendant, and to nominate therefor any person or persons meeting reasonable eligibility requirements;

4. for such compensatory and punitive damages as may be appropriate; and for the costs and disbursements of this action; and for a reasonable attorney's fee; and

5. for such other relief as may be appropriate.

Dated: New York, N. Y., August 12, 1963.

Burton H. Hall, Attorney for Plaintiffs, 136 Liberty Street, New York 6, N. Y.

[fol. 10] [File endorsement omitted]

In United States District Court
Southern District of New York
63 Civ. 2401

[Title omitted]

Order to Show Cause—August 12, 1963
and Filed August 15, 1963

At New York, N. Y., in such district on August 12th, 1963.

Upon the attached affidavit of Raymond H. Harvey sworn to the 10th day of August, 1963, and upon the summons and complaint herein, and upon all the papers and proceedings herein, it is

Ordered, that the defendant herein show cause before this Court at a Motion Part thereof to be held at the United States Court House, Room 506, Foley Square, New York, N. Y., on August 20, 1963, at 10:00 a.m. of that day or as soon thereafter as counsel can be heard, why an order should not issue herein enjoining and restraining defendant, its officers, agents, employees and attorneys, pending trial and ultimate disposition of this action, from conducting or causing to be conducted any election, and from mailing or causing to be mailed, any ballots to be used or purporting to be used in any election for officers of defendant, unless and until defendant has afforded to its members a fair opportunity to nominate candidates in such election; and directing defendant, its officers, agents, employees and attorneys to afford to each member of defendant a fair opportunity to nominate candidates for office in defendant; [fol. 11] and for such other, further and different relief as may be appropriate; and it is further

Ordered, that service of this order to show cause, together with a copy of the papers hereto attached, upon defendant herein on or before August 14th, 1963, at 3:00 p.m., be deemed sufficient service.

Dated: August 12th, 1963.

H. R. Tyler, Jr., United States District Judge.

[fol. 12]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF RAYMOND H. HARVEY

State of New York,
County of New York, ss.:

Raymond H. Harvey, being duly sworn, deposes and says:

That he is one of the individual plaintiffs in this action, brought to protect the rights of the plaintiffs and of all other members of District No. 1, NMEBA, to nominate candidates and to vote in elections of District No. 1, NMEBA; and that he makes this affidavit in support of plaintiffs' motion for a preliminary injunction herein, directing defendant to afford to its members the right to nominate candidates for the elections scheduled to be held by it between September 1, 1963, and November 30, 1963.

The nub of plaintiffs' motion is as follows: District No. 1, NMEBA—a local labor organization of some 6000 members—will hold its elections for officers during the ninety-day period starting September 1, 1963. But its officers, in order to perpetuate their hold on office, have deprived and will continue to deprive its members of their right to nominate candidates unless this Court otherwise orders.

[fol. 13] The devices by which the officers are denying this right to the members are as follows:

(1) members are prohibited, by defendant's by-laws, from nominating any person other than themselves for any office: each member may submit only his own name, no one else's (and no nomination meetings have been or will be held);

(2) members are prohibited, by a ruling of defendant's officers, from nominating themselves to more than one office apiece; hence a member who has nominated himself for one office is prohibited from nominating anyone at all for any other office; and

(3) members who are not already office holders are required to meet outrageously high sea-time requirements

(imposed retroactively, on the eve of the 1963 elections) in order to nominate themselves for any office—hence a large proportion of defendant's membership is prohibited from nominating anyone at all for any office whatever!

These rules were imposed upon defendant's members by officers and District Executive Committee (or "DEC") members who came into office without being elected thereto. The 1963 elections will be the first general elections to be held by defendant (the only previous election being called specially to fill two DEC vacancies), the first opportunity defendant's members will have to elect their own officers.

It is therefore of crucial importance to the members of defendant that their democratic rights be protected in the 1963 elections. To protect those rights—specifically, to protect the members' rights to nominate candidates—this motion is brought.

[fol. 14] 1. The Infringement of the Right to Nominate.

Prior to January 1, 1961, NMEBA was subdivided into local unions, each local union having jurisdiction over a port. Under the national constitutions and local union by-laws that then prevailed, each member was guaranteed the right to nominate any other member, subject to certain eligibility requirements, for any local office. Local union nominations were called for, made and accepted at nomination meetings held in advance of local union elections. Nominations for national offices were called for, made and accepted at national conventions held in the year of election, each delegate to such convention having the right to nominate any other member for any national office, subject to certain eligibility requirements.

Prior to January 1, 1961, the eligibility requirements for office were limited to (a) a requirement that a candidate have been a member in good standing for a set period of years (two for local—and, until March 1963, for district—office; five for national office), (b) a requirement that the candidate not be employed as a salesman for any company operating in the marine field, (c) a requirement that the candidate not be a member of a totalitarian organization,

and (d) a requirement that the candidate have his "primary occupation" as a marine engineer.

On January 1, 1961, local unions in the NMEBA were abolished and replaced by district organizations—one of which was and is defendant District No. 1. The DEC was formed by NMEBA to govern District No. 1 and to "promulgate" a set of by-laws for it. It was composed of already-elected local union officials. This DEC "promulgated"—but did not submit to membership vote or for membership ap- [fol. 15] proval—a set of bylaws which came into effect in 1961 and which, with certain amendments, are still in effect.

These "promulgated" bylaws deprive each member of defendant of his right to nominate persons other than himself for office. Article X, Section 1 of those bylaws provides that a member may "submit his name for nomination"—his own name—by sending in a letter to that effect. No other method of nomination is permitted. No nomination meetings, at which one member might place another's name in nomination, are held or have been held; there is no method by which one member may submit another's name in nomination.

And defendant's practice makes this restriction even more onerous. Defendant, by its "credentials committee," has ruled (in the case of candidate John F. Roman) that a member may nominate himself for only one office. Thus a member who has nominated himself for Branch Agent (i.e., business agent for a port) may not nominate himself for District President—even though he waives all compensation (as candidate Roman did) for the latter office! In other words, a member who has nominated himself for one office is forbidden to nominate himself for any other office.

And the crowning point in the deprivation of nomination rights was reached on the very eve of the 1963 elections, when the National NMEBA amended its constitution, in March 1963, to deprive—retroactively—all non-office holding members of the right to nominate themselves for any District office unless they had served 180 days or more of sea time on NMEBA-contracted vessels during *each* of two, out of the previous three, years.

In addition, the National Constitution was also amended, in March 1963, to provide that no member could be a can-

didate for District President unless he had been a full-time, paid official; and to provide that no member could be a [fol. 16] candidate for any District office unless he had been a member of NMEBA for five years (the previous requirement had been two years).

The effect of these rulings, amendments and provisions is to deprive the great majority of defendant's members of their right to nominate any candidate for the office of District President, and to deprive a large proportion of defendant's members of their right to nominate any candidate for any office whatsoever!

First, by defendant's bylaws, each member is deprived of his right to nominate members other than himself for any office. Second, by the ruling of defendant's credentials committee (backed up and supported by the National Executive Committee of NMEBA), each member is deprived of his right to nominate any member at all for a second office —not only is his choice of nominee limited to himself, but the office to which he can nominate himself is limited to one. And third, the member's remaining right to nominate himself for one office is infringed and (in many cases) denied altogether, by the new and extraordinarily restrictive eligibility requirements.

There has so far been only one election held by District No. 1—a by-election to fill vacancies in the offices of Branch Agent for Jacksonville, Florida, and Houston, Texas. The 1963 elections will be the first opportunity that District No. 1's members will have (and the only opportunity until 1966) to elect their officers and the members of their DEC as a whole. The deprivation of nomination rights in District No. 1 therefore affect the District's 6000 or so members in a serious manner now for the first time.

[fol. 17] 2. The 1963 District Elections.

Elections for national officials are now being held. Ballots in the District No. 1 elections are scheduled to be sent out to the members on or about September 1, 1963. The period for "submitting" nominations has already expired. Unless this Court provides immediate relief, the members of District No. 1 will be deprived of their right to nominate candidates for office in the District No. 1 elections, and

the elections will be conducted on the basis of the above-described procedures which deprive the members of all right to nominate persons other than themselves and which deprive many (perhaps most) members as well of the right to nominate themselves.

Members of District No. 1 have been afforded no right or opportunity whatever to nominate persons other than themselves. No nomination meeting has been held or will be held, unless this Court so orders. And members seeking to nominate themselves have been subjected to the extreme restrictions on eligibility described above.

Each of the three individual plaintiffs has attempted to exercise the only nomination right afforded him under the District No. 1 bylaws, the right to nominate himself. Each plaintiff has been denied this right on the ground that he did not serve 180 days of sea time on NMEBA-contracted vessels in each of two of the three years, 1960-1962.

The status of these three individual plaintiffs illustrates the degree to which members of District No. 1 are denied even the already-limited right of nominating themselves. [fol. 18] Each has been a member of NMEBA for more than five years and a professional marine engineer for more than five years, with his primary occupation that of a marine engineer. Each plaintiff has been a member of District No. 1 since its inception and of his local union prior to that. Yet each is denied eligibility under an oppressive and discriminatory sea-time requirement (discriminatory, since paid officials and appointive officials (the latter being, quite obviously, allies of the incumbent officialdom) are excepted from it).

Your deponent is one member of District No. 1, NMEBA, who has served more than 180 days of sea time as a marine engineer during *each* of the past three years. During 1960 and 1961, however, he was a voluntary, unpaid organizer for NMEBA—officially designated as such—aboard vessels not contracted with NMEBA. As a result, the bulk of his sea time during those two years is not credited to him and he, along with the other two plaintiffs as well as many other members, is denied the right to nominate any person whatever—himself or anyone else—for any District or National office in NMEBA.

Your deponent has been a member in good standing of NMEBA since 1952. He was a member in good standing of Local 33 (New York) from that date until the local was abolished in January 1, 1961; since then he has been a member in good standing of District No. 1, NMEBA. Plaintiff John Galletta has been a member of NMEBA in good standing since 1957, being a member of Local 33 (New York) until January 1, 1961, and thereafter a member of District No. 1, continuously in good standing. Plaintiff Herman Shapiro has been a member in good standing of NMEBA since 1947, being a member of Local 59 (Boston) until January 1, 1961, and a member of District No. 1 thereafter, con-
[fol. 19] tinuously in good standing.

Each plaintiff duly submitted his name for nomination as Patrolman, deponent and plaintiff Galletta for Patrolmen, New York Branch; plaintiff Shapiro for Patrolman, Boston Branch. Each plaintiff's nomination was denied by defendant on the ground that each was disqualified by reason of insufficient sea time. Defendant asserted that its records show the following amount of sea time for each plaintiff:

	1960	*1961*	*1962*
Raymond H. Harvey	9	2	216
Herman Shapiro	144	144	311
John Galletta	126	178	129

The grounds for the rejection of plaintiffs' nominations illustrate the degree to which the new, restrictive eligibility requirements further restrict nomination rights. The sea time served by each is approximately equal to, or greater than, the amount of sea time served by the average, active marine engineer who is a member of NMEBA—even during years in which the industry is prosperous. During years in which the industry is in a slump, the average member serves far less sea time than that served by plaintiffs in the past three years. Hence the eligibility restrictions based on sea time threaten to destroy those democratic rights of NMEBA members which still survived prior to the March 1963 constitutional amendments.

Your deponent verily believes that the restrictions upon the members' rights to nominate candidates for office in District No. 1, NMEBA, have been imposed by the officers of defendant and of National NMEBA for the improper purpose of perpetuating themselves in office and depriving [fol. 20] NMEBA members of democratic rights to control their union affairs.

Unless this Court otherwise orders, defendant will deprive and continue to deprive plaintiffs and all other members of defendant of their rights to nominate candidates for office in the 1963 elections of defendant District No. 1, and your deponent, his fellow plaintiffs, and all other members of defendant will be severely prejudiced thereby and will lose thereby valuable and material rights, including the right to control their union democratically and to impose democratic responsibility on the officers of defendant, both with regard to union affairs generally and with regard to the handling and disposition of the union treasury.

By the loss of such rights, pending trial, your deponent, his fellow plaintiffs, and all other members of District No. 1 will suffer irreparable and grievous injury for which there is no adequate remedy at law.

Your deponent and his fellow plaintiffs have exhausted all of their intra-union remedies. Each has attempted to nominate himself for union office—the only method of nomination allowed to members by the District Bylaws—and the nomination of each has been denied by defendant's officials. The only appeal allowed from such denial is to the membership, voting by hand vote at Branch meetings (i.e., in full view of the defendant's officials, who hold power over the members' job opportunities). Your deponent and plaintiff Shapiro have exhausted even this, unreasonable appeal procedure. Plaintiffs have no remaining remedy save to come to this Court.

[fol. 21] No previous application for the relief requested herein has been made to this or to any other Court or agency.

The reason why this motion is brought on by order to show cause instead of by notice of motion is that there is

not sufficient time for this motion to be heard on ordinary ten-day notice before the date on which ballots in the defendant's election are scheduled to be mailed.

Wherefore, your deponent prays that plaintiffs' motion for a preliminary injunction, protecting their right and the right of all members of defendant to nominate candidates in the 1963 elections of defendant, be granted.

Raymond H. Harvey.

Sworn to before me this 10th day of August, 1963.

Burton H. Hall, Notary Public, State of New York, No. 24-6732129—Qual. in Kings Co., Commission Expires March 30, 1964.

[fol. 35] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ 2401

[Title omitted]

ORDER TO SHOW CAUSE—August 14, 1963
and Filed August 19, 1963

Upon the annexed motion and the affidavit of David Scribner, duly sworn to August 14, 1963, and the complaint herein, it is

Ordered that the plaintiffs show cause at a Motion Term of this Court to be held in Room 506, United States Court House, Foley Square, City and State of New York, on the 20th day of August, 1963 at 10:00 o'clock of that day or as soon thereafter as counsel can be heard, why an order should not be made herein dismissing the complaint, and

It Is Further Ordered, that service of a copy of this order and the papers upon which the same is granted, on Burton H. Hall, Esq., attorney for plaintiffs on August 16th, 1963 before 4:00 P.M. o'clock shall be sufficient service of this order.

Dated: August 14, 1963.

H. R. Tyler, Jr., United States District Judge.

[fol. 36]

In United States District Court

Southern District of New York

63 Civ 2401

[Title omitted]

Defendants' Motion to Dismiss Complaint—
Filed August 19, 1963

Defendants move the Court under Rule 12(b) of the Rules of Civil Procedure for an Order dismissing the Complaint herein on the grounds that the Court lacks jurisdiction over the subject matter and that the Complaint fails to state a claim upon which relief can be granted.

Dated: August 14, 1963.

Pressman & Scribner, Attorneys for Defendants, 50 Broadway, New York 4, N. Y.

[fol. 37]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ 2401

[Title omitted]

AFFIDAVIT OF DAVID SCRIBNER

State of New York,
County of New York, ss.:

David Scribner, being duly sworn, deposes and says that he is a member of the firm Pressman & Scribner, attorneys for the defendants herein.

This affidavit is submitted in support of defendants' application for an order directing the plaintiffs to show cause at a Motion Term of this Court on August 20, 1963 why an order should not be made herein dismissing the complaint.

On August 12, 1963, Honorable H. R. Tyler, Jr., District Judge for this District, signed an order upon application of the plaintiffs directing the defendants to show cause at a Motion Part in this Court on August 20, 1963 why an order should not be entered in respect to a current union election. Copies of the order to show cause and the accompanying papers were served on defendants on August 13, 1963, late afternoon.

[fol. 38] It is respectfully submitted that a hearing on the same day of the plaintiffs' application for a restraining order and defendants' motion to dismiss the complaint herein will conserve the Court's time and will serve the interests of all parties. The issues involved in both motions are necessarily related and the Court would be aided by a joint hearing on both. If after argument on both motions the Court were to dismiss the complaint on the grounds urged by defendants, the application for a restraining order would necessarily fall.

Defendants cannot proceed by motion within the time required by the rules in order to have their motion to dismiss heard on the same day as plaintiff's application for a preliminary injunction.

Wherefore, it is respectfully requested that defendants' motion to dismiss be made returnable on August 20, 1963 at 10:00 A.M.

No previous application for the relief requested herein has been made to this or any other Court.

David Scribner.

Sworn to before me this 14th day of August, 1963.

Barbara Ann Weinstein, Notary Public, State of New York, No. 24-9581575, Qualified in Kings County, Cert. filed in New York County, Commission Expires March 30, 1964.

[fol. 39] Affidavit of Service (omitted in printing).

[fol. 40] [File endorsement omitted]

In United States District Court

Southern District of New York

No. 63 Civ 2401

[Title omitted]

Affidavit of Jesse M. Calhoon in Opposition to Application for Preliminary Injunction—Filed September 3, 1963

State of New York,
County of New York, ss.:

Jesse M. Calhoon, being duly sworn, deposes and says he is Chairman of District 1 National Marine Engineers' Beneficial Association, AFL-CIO.

The plaintiffs in this case essentially complain about the qualifications established for office in District 1 MEBA and that although the District 1 Constitution requires that an impartial administrator be designated to conduct the election, that no such body has or will be designated.

At the outset, before I go into the questions raised as to the qualifications for Union office, it must be noted that an impartial administrator has been designated, as required by the Constitution, and that there is not the slightest truth

in the wild assertion made by plaintiffs that District 1 had no intention of designating an impartial administrator. [fol. 41] This impartial administrator was designated after all appeals by any nominees for office who had been declared disqualified had been acted on by the Union's branches, as provided in District 1 By-laws. Almost immediately after receiving official notice of the action of the Union's branches on the appeals from any disqualified candidates, and pursuant to Article X, Section 3(g) of the District 1 By-laws, the law firm of Kreutzer, Helfer & Selman was designated on August 14, 1963 as the Impartial Administrator to supervise the conduct of the election. That was the earliest time that the impartial administrator could be designated since their first function was to cause the printing and mailing of the ballots, which could only be done after the list of qualified nominees was established.

This law firm designated as Impartial Administrator consists of highly reputable members of the Bar whose unquestioned integrity will insure that the balloting and the balloting count in the secret ballot election for District 1 officers will be conducted in a fair and impartial manner.

S. Stanley Kreutzer, who has been practicing law for more than 30 years, has held many governmental posts. He is currently counsel to the New York City Board of Ethics and counsel to the New York State Assembly on Ethics and Guidance. He is also a member of the Executive Committee of the Citizens Union.

Benjamin Heller was secretary to Mr. Justice Meier Steinbrink of the Supreme Court of the State of New York; Kings County for a period of 13 years; former associate counsel to the City Council of the City of New York in ouster proceedings against certain councilmen and in the formulation of a code of ethics for the officers and employees of the City of New York; and was associate counsel for [fol. 42] a Legislative Committee of the New York State Assembly in respect to questions of ethics.

Martin H. Selman has served as Trial Counsel for the National Labor Relations Board and as attorney for the New York State Labor Relations Board.

Before going into the complaints as to the Union's Constitutional provisions regarding the qualifications for candidacy to District 1 office, I should like to acquaint the Court with the history, accomplishments and democratic nature of the Marine Engineers' Beneficial Association. I do this in order to dispel the wild and unsupported statement by plaintiffs' counsel in his brief that "The background to the disqualifications and deprivals is one of bureaucratic skullduggery." (Plaintiffs' Memorandum, Page 4.)

National MEBA is an established and respected Union representing almost 95% of the licensed marine engineers in the country. It has been in existence for some 85 years. It is and has been an accredited affiliate of the AFL-CIO. Consistent with its long tradition of democratic trade unionism, annual conventions are held with delegates elected by the membership through a referendum secret mail ballot vote. Financial accountings are supplied quarterly at membership meetings. Officers are elected by secret balloting referendum. Collective bargaining agreements require the ratification of the membership affected. The financial affairs of the Union are meticulously accounted for. There has never been a scandal affecting the handling of the Union's funds. The auditing of the Union's books and accounts is entrusted to a reputable firm of certified public accountants well known for their competency and integrity. [fol. 43] Marine engineers' wages and working conditions negotiated and established through collective bargaining agreements are commonly recognized as the best in the maritime industry. The same is true for the negotiated pension, welfare and vacation benefits for the marine engineers represented by MEBA. In addition, the Union has an unparalleled and enviable record in the successful handling of grievance and arbitration procedures in the interests of marine engineers.

I shall now address myself to the plaintiffs' charges concerning the qualifications for District 1 office, as provided in the Union's Constitution and By-laws. I must first observe that there is no charge or complaint by the plaintiffs that the Union has violated its Constitution and By-laws with respect to qualifications for District 1 officers. Plaintiffs concede that the disqualifications complained of

were in accordance with the Union's Constitution and By-laws but assert that those constitutional provisions are improper.

Plaintiffs first complain that the Union's Constitutional requirement that a candidate may be his own nominee for District office is unfair and restrictive. This is absurd on its face. Far from creating any restriction, this provision permitting every member of the Union to nominate himself for Union office is the broadest possible procedure to insure that every member of the Union may be nominated for office. All a member has to do is to nominate himself. This provision was specifically designed to eliminate any possible impediment in respect to the opportunity for every member of the Union to have his name offered as a nominee for of-
[fol. 44] fice. The Union was particularly sensitive to the fact that since its members are seafaring men they cannot always attend Union meetings. The usual requirement in union constitutions that nominations be made at either union meetings or union conventions was felt to be too restrictive of the rights of seafaring men to be nominated for office. And so, as of January 1, 1961, constitutional provisions affecting District 1 subordinate bodies which required that a candidate could be nominated *only at Union meetings* were changed to allow each member to nominate himself, regardless of whether or not he appeared at a meeting, merely by his mailing to the Union his statement that he was a nominee and providing the necessary information so that the Credentials Committee could make a determination as to whether or not he met the Constitutional requirements for Union office.

The report to the Constitution Committee to the March, 1963 National Union Convention recommending the same procedure for the nomination of National officers stated:

> "What this does, basically, is make a complete change in the old method of nomination. Under the existing Constitution, the only way a man can be nominated for National office is if he *is nominated at the Convention.* That means he has to be physically present, or he has to have a representative to the Convention nominate him. Then he has to notify the National Balloting

Committee within ten days after the close of the Convention whether or not he accepts. That makes it fairly difficult under the existing language to take care of being nominated.

"The changes were made to establish the same type of nominating procedure which is in existence in the District By-Laws. As you have heard the items read off, you can see where it provides much greater opportunity for a member to be nominated for National office, and fulfills the requirements of the Landrum-Griffin Bill."

[fol. 45] The amendment was adopted by substantially more than the two-third requirement for Constitutional amendments.

It is my firm belief that the procedure adopted is the most democratic method. It makes it easier for any member who wishes, to nominate himself. He does not have to appear at the convention or any meeting or rely on somebody else to present his name in nomination at the convention. Nor is there a requirement, as appears in some maritime union constitutions, that the nominee must submit together with his nomination an endorsement by other Union members.

Moreover, every member of the Union had sufficient notice, even if he were at sea, to take advantage of the opportunity for nomination to District office. In the District No. 1 elections, nominations had to be submitted by July 12, 1963. All applicable provisions of the Union Constitution with respect to District elections were incorporated in the March, 1963 issue of the American Marine Engineer, the official Union newspaper. The May, 1963 issue of that paper carried the full text of the applicable provisions of the National Constitution and District No. 1 By-laws under a heading in bold face: "Eligibility Requirements for Office in District 1." The June, 1963 issue of the American Marine Engineer again gave specific information as to the District No. 1 election procedures and the nomination deadline. These newspapers were regularly mailed to the membership at their home address and were also sent to vessels on which they were sailing.

It is important to note that none of the plaintiffs have been in any way hurt or affected by the provision allowing self-nomination by any Union member. *The fact is that each plaintiff has taken advantage of the Constitutional* [fol. 46] *provision and has nominated himself.* Thus, the plaintiffs have benefited from the Constitutional provision, as have all other members of the Union who decided that they wished to run for District office. It is incredible to me that any charge of unfairness could be made as to a procedure whereby any member of the Union may, by his own decision, unencumbered by any other consideration or condition, have his name placed in nomination merely by writing a letter to the Union stating that that was his desire.

The practice of self-nomination for election to national office is commonplace among the Unions in the maritime field. For example, the constitutions of the Seafarers International Union, the National Maritime Union and the Marine Cooks and Stewards Union all provide for self-nomination as the exclusive procedure for nominations to office. (The latter two unions require that the nominee must also have the endorsement of a substantial number of other union members for his nomination, a condition not required in MEBA.)

All three plaintiffs were declared disqualified by a Credentials Committee, consisting of three rank and file members of the Union elected by the membership and who are not running for office, on the sole ground that plaintiffs had not complied with the provision of Article X, Section 9 which requires "180 days of employment on vessels covered by collective bargaining agreement with the Union during each of any two full calendar years of the three calendar years immediately preceding the closing date of nominations . . . " Plaintiffs admit that their sailing time fell short of the Constitutional requirements. It should be noted that this Constitutional requirement was interpreted by [fol. 47] the Credentials Committee *to permit vacation time during each of the three preceding years to be computed as part of the sailing-time requirement.* Each of the plaintiffs was so credited. However, even with this liberal interpretation of the Constitution, the plaintiffs' sailing time did not fulfill the Constitutional requirement. The effect

of the allowance of vacation time (from six to ten days per month) in the computation of sailing time is that only four and one-half to five months of sailing time within each of two of the three years before the election would satisfy the Constitutional requirement. Moreover, periods of illness are likewise credited towards this sailing time requirement.

It is common practice in the maritime industry for unions to require as a condition for elective office that the candidate be actively engaged as a seafarer for specified periods prior to the nominating time. The Seamens International Union requires three years sea-time; the Marine Firemens Union requires 90 days sea-time on union contracted vessels for the twelve months preceding the member's nomination, and three years sea-time experience or at least twelve months service as a seaman before the nomination on a vessel covered by the union contract; the National Maritime Union requires three years sea-time and the nominee must not have been ashore more than six months preceding his nomination; the Sailors Union of the Pacific requires that nominees shall not have been ashore over six months at the time of nomination and must have three years actual service on ships; Marine Cooks and Stewards Union requires that a nominee must have three years sea-time on ships under union contract and six months sea-time on union contract ships between January 1 of the year of nomination and the time of nomination. These maritime unions, as does the MEBA, credit elected full-[fol. 48] time officials with their time in office against the sea-time required. If this were not done, elected officials would be penalized for having served in office by being denied the right to run for union office.

The rationale for requirement of sea-time experience in one form or another is apparent. Essentially, a union of seamen, and in the case of Marine Engineers' Beneficial Association, licensed marine engineers, is designed primarily to protect and advance the interests of its members who have not left their calling but are substantially engaged as seamen. This is a fundamental concept with all unions including those outside of the maritime field. Can it be said, therefore, that it is an unfair requirement that

any member who wishes to run for office in a union should be required to show that he has continued to function in the industry for a substantial period of time prior to his nomination for office? Only those members of the Union who continue to be actively engaged in their calling as marine engineers and those acting as full-time, elected officers would truly know and understand the problems in the industry and be able to administer the affairs of the Union in the interest of its members.

The particular qualifications for MEBA District 1 officers, i.e., service of 180 days on Union contracted ships for each of two years during the three years preceding the nomination, is a reasonable qualification for District office. That was the judgment, by substantially more than a two-third vote, of the delegates to the March, 1963 Convention at which this qualification was adopted. It should be added that the delegates to the Union Convention at which this [fol. 49] amendment was voted were all elected as such by the membership in a secret ballot referendum vote and thereby represented the wishes and interests of the entire membership.

Plaintiffs appear to complain of the fact that the time the amendments referred to above were adopted, the Convention also adopted an amendment striking out the prior requirement of two years *consecutive good-standing* membership immediately prior to the nomination. The Convention substituted therefor a requirement of five years previous membership in the National Union and two years in a District or local body prior to the nomination (Article X, Section 9). *The amendment does not require consecutive "good-standing" membership during those periods.* The nominee need be in good standing only at the time of nomination and election. The very purpose of this amendment, as stated by the Constitution Committee in its report to the Convention, was to eliminate what the Committee felt was "too stringent" a requirement. The Convention agreed and adopted this amendment by substantially more than the two-thirds required vote. None of the plaintiffs were disqualified for failure to comply with that requirement. Indeed, only one nominee of more than some 125 members who were nominated was held disqualified on any such

ground, every other nominee having complied without the slightest difficulty.

The plaintiffs next complain about the Union's Constitutional provision which requires as a qualification for candidacy for office of District President (this qualification does not apply to any other District office) that a member must have "previously been elected and served as a full-time and paid official of a subordinate association, District or any other organization which is duly affiliated with the [fol. 50] National Association." (National Constitution Article X, Section 9.) But none of the plaintiffs chose to run for the office of District President. As to the respective offices for which they were nominated, there is no requirement that they have any such past service as an officer in order to be qualified. They have no cause, therefore, for complaint.

In any event, such requirement is reasonable as it applies to the office of District 1 President because of the nature of the special problems in the maritime industry. The District President is directly responsible for and actively participates in collective bargaining negotiations affecting the membership in the District, and it is common knowledge that collective bargaining problems in the maritime industry are more difficult and complex than in almost any other of the country's industries. As a Presidential Board of Inquiry, consisting of the Hon. Samuel I. Roseman, Hon. James J. Healy and Hon. David L. Cole, reported to the President of the United States on July 2, 1961: "The collective bargaining structure in the maritime industry is most complex . . ." and again, "The collective bargaining relationships in this [maritime] industry are . . . exceedingly complicated and confusing."

The protection of job security for maritime personnel and especially for marine engineers in a fluid industry where ship sales and transfers and complicated intercorporate transactions affecting the ownership or operation of ships occur constantly require the most sophisticated and knowledgeable union representation. The wage structures, manning scales, pension and retirement and vacation systems as well as the dispute settlement procedures and new and developing problems in the industry, such as automation, par-

[fol. 51] ticularly as they affect marine engineers, are so complex and must be so carefully planned, structured, negotiated, applied and policed as to require that certainly the District 1 President have at least the minimum prior experience as a full-time officer of the District or of a local as required by the Constitution. Such background serves to insure that the interests of the entire membership will be fully protected particularly since the problems in this industry are becoming daily more complex.

Such qualification is not unusual in the maritime field. The National Maritime Union, AFL-CIO (NMU) constitution requires as one of the qualifications for national office that the nominee must have served "at least one (1) full term as a Branch Agent, Field Patrolman, or Patrolman" (Article 9, Section 1(b) of the NMU Constitution on file with the Bureau of Labor Reports in the U.S. Department of Labor). That provision requiring prior service of a *full term* of office must be distinguished from the MEBA requirements of *any* prior service as an officer. The NMU Constitution, including the aforementioned qualification provision, was subject to the closest scrutiny by the Secretary of Labor in a proceeding instituted by him against the NMU in this Court (*Mitchell* v. *National Maritime Union*, Civil Action No. 3821, 1960). The parties terminated that litigation by stipulation and the action was discontinued with prejudice. The particular qualification as to prior service of a full term was in no way affected by the litigation and I am advised that the current NMU Constitution still has the same qualification requirements and that that requirement is still operative.

[fol. 52] Moreover, many Union members have held prior office in the District or in a local Union body and would be eligible for the office of District President, assuming they have the other required qualifications. And plaintiffs do not suggest that the qualifications for the office of District President, have been discriminatorily applied or that they were not uniformly imposed on all members.

Plaintiffs also complain that a member may not run for two full-time Union offices. Again, none of the plaintiffs ran for two full-time offices nor were they disqualified for any such reason. The National Executive Committee of

the Union has ruled that it was the intent of the District By-laws that a member may not at the same time run or serve in more than one full time District elected office. This is obviously a reasonable interpretation. I am advised by Counsel that there is no requirement in the Landrum-Griffin Act or elsewhere requiring that union constitutions permit union members to run for more than one full time union office. It is indeed curious that the plaintiffs object to any such limitation. Any complaints in respect to this issue are usually against the holding of more than one full-time union office. It was in apparent response to complaints *against* the holding of more than one office, that the Secretary of Labor ruled "there is nothing in the Labor-Management Reporting and Disclosure Act of 1959 which prohibits the holding of more than one office if the constitution and by-laws permit such practice." (Bureau of Labor Management Reports, Technical Assistance Aids No. 5, p. 20). In other words, it is *not illegal* to hold more than one office. But that is a far cry from saying that it *is illegal* for a union [fol. 53] to ban the holding of more than one office. That ruling of the Secretary of Labor makes it clear that the Union Constitution prevails and that it is up to the Union to decide whether it wishes to permit or prohibit the holding of more than one Union office.

Plaintiffs stress that this District election is important. With that I wholeheartedly agree. Every Union election is important to the membership. And this election, as has already been noted, will be under the direct supervision of Kreutzer, Heller & Selman, the noted firm of attorneys.

In their papers plaintiffs intimate that the By-laws of District 1 have not been subject to membership action. While plaintiffs do not attack the legal validity of the procedures whereby the By-laws were adopted, I should like to acquaint the Court with the procedures which led to the adoption of these By-laws as they are now constituted.

In 1960 a secret ballot referendum vote was held among the entire National membership of MEBA in respect to a reorganization plan recommended by an annual convention of the Union. The question presented was whether District organizations should be set up with all members of the local organizations in each District being members of their

respective District, thus pooling their strength in regional organizational bodies. One important consideration among others for this proposed reorganization was that under the existing plan of organization members of a local who were constantly traveling as a result of their seafaring employment could not attend their own Branch meetings nor were they permitted to attend or have a voice in meetings of [fol. 54] a local Union body elsewhere in the same District where the member might then be. Under the proposed District reorganization, members of each District would be able to speak and vote at membership meetings held in any of the Branches of the District organization. No member could be disenfranchised because he was not in his own Branch or local on meeting night. Another important consideration was that shipowners and operators had organized their collective bargaining on a centralized basis. This obviously required a union form of organization based on a larger geographical area than that of a local body to cope with the problems created by the employers' collectiv 'argaining and operational structures.

The planned reorganization was adopted by the entire membership in this secret ballot referendum by an overwhelming vote. I might add that the action of the 1960 Convention which made the reorganization recommendation and the procedures of the referendum approving and adopting the plan of reorganization, were judicially approved by the U.S. District Court for the Southern District of Alabama, Southern District, by an order dated May 3, 1963 granting a summary judgment on the merits in favor of MEBA, in *Calagaz* v. *Kellogg*, Civil Action No. 2566; *Calagaz* v. *Calhoon*, Civil Action No. 2626; and *Clinton* v. *Hueston*, Civil Action No. 2591.

The election of the officers of the local bodies of the Union were going on during the same period that the National referendum on the reorganization was taking place. The referendum provided that if the reorganization was adopted by the membership, the officers who had been elected by the secret ballot vote of the members of the respective local bodies within a District would be, by virtue of such election, [fol. 55] elected to office in their respective District. The referendum also provided that the Union assets and prop-

erty of the local bodies were not to be affected in any way by the formation of the District organization.

The District organization, through the District Executive Committee, its leading body, thereupon proceeded, also pursuant to the referendum program adopted in the secret ballot referendum, to adopt District By-laws. Thereafter the District Executive Committee called a Special By-laws Conference to consider the By-laws and to recommend any changes and revisions. The Special By-laws Conference was held in July, 1962 and was composed of delegates elected by the Union membership of every Branch in the District. After the delegates had voted upon recommended revisions and changes in the District By-laws, the District Executive Committee ordered a District-wide membership secret ballot referendum vote on the adoption or rejection of the revisions recommended by the Special By-laws Conference. Such a referendum vote was held under the supervision of Dr. Donald F. Shaughnessy. The present District By-laws (copy of which is attached as Exhibit "A") is the product of that secret ballot referendum vote and more recent amendments.

Despite plaintiffs' assertions to the contrary, they have not exhausted the internal Union procedures available to them in respect to the issues they now raise in this Court. One of the plaintiffs, namely John Galletta, has not even filed an appeal from his disqualification by the Credentials Committee to the membership of the District. Article X, Section 2(c) of the District No. 1 By-laws provides in [fol. 56] relevant part: "When an applicant has been disqualified by the Credentials Committee, he shall be notified immediately by telegram at the address listed by him in his letter of nomination. He shall also be sent a letter containing the reasons for such disqualification by air mail, special delivery, registered, to be same mailing address. A disqualified applicant shall have the right to take an appeal to the membership from the decision of the Committee . . ."

Nor have any of the plaintiffs appealed to the National Executive Committee either from the action of the membership of the District or from the action of the District Credentials Committee, as provided in Article XII, Section 2

of the National Constitution. Nor can it be said that there was not enough time for them to follow this procedure. The fact is that the ballots for the election of District officers are required by the District By-laws to be sent out on or about September 1, 1963. Even as of August 10, 1963, the date of plaintiffs' supporting affidavit to this Court, there were at least twenty days within which an appeal to the NEC could be filed and processed. Under the National Constitution, the NEC does not have to meet in order to act on appeals. The NEC may act by mail or wire, assuring early disposition of any appeal. In any event, plaintiffs did not even attempt to test the time element involved in an appeal to the NEC.

Plaintiffs also waited for a period of more than two and one-half years to file a suit in this Court or otherwise test the validity of the District By-laws giving each member the right to nominate himself for District offices. The District By-laws so providing became effective January 1, 1961. It is unconscionable that plaintiffs should have waited for two [fol. 57] and one-half years and until the election procedures had actually commenced before attacking the validity of that provision of the Constitution.

I respectfully submit to the Court that there is no valid cause for complaint on the part of the plaintiffs and that the complained of qualifications for election office in the District are reasonable and consistent with the requirements of the democratic process. I am also advised by Counsel that the Labor-Management Reporting and Disclosure Act of 1959 requires that plaintiffs proceed by filing whatever complaint they think they have in respect to qualifications for union office with the Secretary of Labor who, if he considers that the union has violated any provision of Title IV of that law, can then file a complaint with this Court to remedy the situation.

(For the convenience of the Court, attached is a copy of the National 1962 Constitution as Exhibit "B", and the National 1963 Constitution as Exhibit "C")

Jesse M. Calhoon.

Sworn to before me this 19th day of August, 1963.

Ned R. Phillips, Notary Public, State of New York, No. 24-8361125, Qualified in Kings County, Certificate filed in New York Co., Commission Expires March 30, 1964.

[fol. 58]

EXHIBIT "A" TO AFFIDAVIT OF JESSE M. CALHOON

(See opposite) ☞

By-Laws

OF

DISTRICT NO. 1

OF

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

OF THE

UNITED STATES OF AMERICA

1963

National Association Organized February 23, 1875

By-Laws

OF

DISTRICT NO. 1

OF

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

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1963

National Association Organized February 23, 1875

704

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for
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of
NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

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BY-LAWS
of
DISTRICT No. 1
of
NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

ARTICLE I

Name and General Powers

This organization shall be known as "District No. 1" chartered by the National Marine Engineers' Beneficial Association. Its powers shall be legislative, judicial and executive.

A majority vote of the membership shall be authorization for any Union action, unless otherwise specified in the National Constitution or these By-Laws.

ARTICLE II

Membership

Section 1. As of the effective date of these By-Laws, the members of the Subordinate Associations of the Atlantic and Gulf Districts shall be deemed members of this organization.

Section 2. Candidates for membership shall be admitted to membership subject to and in accordance with the applicable provisions of the National Constitution and such rules as are adopted from time to time by the District Executive Committee, unless otherwise ordered by a majority vote of the membership.

Section 3. The members of this District shall be entitled to all the rights and privileges of members and subject to such duties and

responsibilities including the payment of dues and other financial obligations as are provided in the National Constitution. No member shall be entitled to any benefits of the Union or be considered in good standing unless his dues are paid up for the full current calendar quarter or paid in accordance with any dues checkoff system under any collective bargaining agreement maintained by the National or this District.

ARTICLE III

System of Organization

Section 1. This District, its officers, representatives and members, in any and all Branches, shall be governed in this order by:

(a) The National Constitution and these By-Laws,

(b) District Executive Committee, and

(c) Majority vote of the membership.

Section 2. The Headquarters of the District shall be located in New York and New Orleans. Branch offices shall be maintained, unless changed as elsewhere provided in these By-Laws, in Headquarters and the Ports of Boston, Philadelphia, Baltimore, Norfolk, Jacksonville, Miami, Tampa, Mobile, Houston, Galveston and such other Ports as may be determined by the District Executive Committee.

Section 3. There shall be a District President.

Section 4. There shall be a District Vice President.

Section 5. There shall be one Branch Agent for each of the Port's Headquarters and for each additional Port designated in Section 2.

The number of Patrolmen if any, for Headquarters Ports and for any other Port shall be determined as elsewhere provided in these By-Laws.

The Branch Agent for New York Headquarters shall, in addition to his regular duties, assume the title and duties of Secretary-Treasurer.

Section 6. The Headquarters and the several Branches shall be manned by such officers and staff personnel as shall be determined by the District Executive Committee, unless otherwise directed by a majority vote of the membership.

Section 7. There shall be a District Executive Committee consisting of the District President, the District Vice President, Secretary-Treasurer and the other elected Branch Agents.

Section 8. A quorum for meetings of the District Executive Committee shall be a majority of those eligible to attend.

Section 9. All official meetings in this Union shall be recorded by minutes.

Section 10. Pending the first regular District-wide election:

(a) The membership and voting basis of the District Executive Committee shall be in accordance with the provisions of the National Constitution pertaining to District Executive Committees. Any such member must be either a National officer or an official of the District Organization.

(b) All full time and paid officials of the Subordinate Associations on the Atlantic and Gulf Coasts, elected in the 1960

elections, shall be officials of the District Organization for the term of their office.

(c) The District Executive Committee shall have the authority to bestow the appropriate titles upon such officials and to assign any of said officials to such duties, as it may determine, for the efficient and effective administration of the affairs of the District Organization, unless otherwise directed by a majority vote of the membership.

(d) The District Executive Committee shall have the authority to designate its own officers, from among its own members, bestow appropriate titles and allocate among them the necessary powers, duties and responsibilities for the full administration of the affairs of the District, subject to the authority of the District Executive Committee and the membership.

ARTICLE IV

Officers and Representatives

Section 1. The officers of the District shall be elected, except as otherwise provided in these By-Laws. These officers shall be the District President, the District Vice President, the Branch Agents and those specific Patrolmen so designated by the District Executive Committee.

Section 2. The Representatives to the National Convention shall also be elected. The District President and Branch Agents shall be ex officio delegates to the National Convention. At the election of officials of this District it shall be stated, in addition to the District Pres-

ident and Branch Agents, that they are also delegates to the National Convention and they shall so become. The Union may elect in addition such additional Representatives and alternates as the District Executive Committee may determine, unless otherwise directed by a majority vote of the membership consistent with the provisions of the National Constitution.

ARTICLE V

Other Elective Jobs

Section 1. In addition to the elective jobs provided for in Article IV, the following jobs in the District shall be voted upon in the manner prescribed by these By-Laws:

Committee Members of:
(a) Trial Committee
(b) Strike Committee
(c) Credentials Committee
(d) Constitutional Committee
(e) Tallying Committee

Section 2. Additional Committees may be formed upon recommendation of the District Executive Committee, unless otherwise directed by a majority vote of the membership. Committees may also be appointed as permitted by these By-Laws.

ARTICLE VI

Duties of Officers, Representatives and Other Elected Personnel

Section 1. District President

(a) The District President shall be the executive officer of the District and shall represent and act for and in behalf of,

the District in all matters except as otherwise specifically provided for in these By-Laws.

(b) He shall be a member ex officio of all committees, except as otherwise herein expressly provided.

(c) He shall be in charge of and responsible for all District property and shall be in charge of Headquarters, Branch Offices and all other Ports within the jurisdiction of the District. Whenever there are time restrictions or other considerations affecting District action, he shall take appropriate action to insure observance thereof.

(d) In order that he may properly execute his responsibilities, he is instructed and authorized to employ any help he deems necessary, be it legal, accounting or otherwise.

(e) At the regular meeting in May of every election year, he shall, subject to the approval of the District Executive Committee, submit to the membership a preballoting report. In his report he shall recommend the specific Ports (in adtion to Headquarters) for which Branches will be maintained and the Branches for which Patrolmen are to be elected and the number, if any, and unless otherwise ordered by a majority vote of the membership, the report shall be deemed accepted.

He shall also in such report recommend a post office, or any other similar depository, to which the ballots are to be mailed or delivered.

(f) He shall be Chairman of the District Executive Committee and may cast one vote in that body.

(g) He shall be responsible for the signing of new contracts and contract enforcement.

(h) He shall be responsible, within the limits of his powers, for the enforcement of these By-Laws, the policies of the District and all rules and rulings duly adopted by the District Executive Committee and those duly adopted by a majority vote of the membership. Within these limits, he shall strive to enhance the strength, position and prestige of the District.

(i) The foregoing duties shall be in addition to those other duties lawfully imposed upon him.

(j) The responsibilities of the District President may not be delegated but he may delegate to a person or persons the execution of such of his duties as he may in his discretion decide, subject to the limitations set forth in these By-Laws.

(k) He is directed to take any and all measures and employ such means which he deems necessary or advisable to protect the interests and further the welfare of the District and its members in all matters involving national, state or local legislation issues and public affairs.

(l) He shall have the authority to require any officer or representative of the District to attend any regular or special meeting if in his opinion it is deemed necessary.

(m) The District President in the event of incapacity on the part of any elected officer, shall, subject to the approval of the District Executive Committee, designate a replacement provided he is qualified under the National Constitution and these By-Laws to fill the job.

Section 2. Vice President

(a) He shall perform any and all duties assigned him or delegated to him by the District President, or the District Executive Committee.

(b) He shall be in charge of and coordinate all activities of the Branches, including Headquarters in New Orleans, in the Gulf area.

(c) He shall be responsible for the signing of all new contracts with companies in the Gulf area.

(d) He shall be a member ex officio of all committees, except as herein otherwise expressly provided.

Section 3. Secretary-Treasurer—Branch Agent for New York Headquarters

(a) He shall perform any and all duties assigned him or delegated to him by the District President. He shall be responsible for the organization and maintenance of the correspondence, files and records of the District, setting up and maintenance of sound accounting and bookkeeping systems; the setting up and maintenance of proper office and other administrative procedures; the proper collection, safeguarding and expenditure of all District funds.

(b) He shall submit to the membership for each quarterly period, a detailed report of the entire District's financial operations. The Secretary-Treasurer's report shall be prepared by an independent Certified Public Accountant.

(c) He is instructed and authorized to employ any help he deems necessary, be it legal, accounting, or otherwise subject to the approval of the District President and the District Executive Committee.

Section 4. Branch Agents

(a) The Branch Agent shall be in direct charge of the administration of District affairs in the Port or Ports of his jurisdiction.

(b) He shall, within the jurisdiction of his Port or Ports, be responsible for the enforcement and execution of these By-Laws, the policies of the District and the rules adopted by the District Executive Committee and/or a majority vote of the membership.

(c) He shall be prepared to account, financially or otherwise, for the activities of his Port or Ports, whenever demanded by the District President, District Vice President or Secretary-Treasurer.

(d) In any event, he shall prepare and forward to the Secretary-Treasurer, a weekly financial report showing in detail weekly income and expenses and complying with all other accounting directions issued by the Secretary-Treasurer.

(e) The Branch Agent shall assign each Branch Patrolman to such duties as fall within the jurisdiction of the Branch.

(f) The Branch Agent shall designate which members at that Port may serve as representatives to other organizations affiliations with which have been properly authorized.

(g) The foregoing is in addition to those other duties presented elsewhere in these By-Laws.

(h) Where practical and feasible, within the economy of the District, Branch Agents shall be empowered to assign an elected Patrolman or other employee of the District to devote the necessary time and effort as is required to provide full and complete counsel, guidance and service to those members who are entitled to the benefits of the MEBA Plans under the several MEBA Collective Bargaining Agreements.

Section 5. Branch Patrolmen. Patrolmen shall perform whatever duties are assigned to them by the Branch Agent of the Port to which they are assigned or by the District President and/or the District Executive Committee.

Section 6. District Executive Committee

(a) The District Executive Committee shall meet in Headquarters or in one of the Branches no less frequently than once each quarter and at such other times as the District President or in his absence the Vice President may direct. The District President, or in his absence, the

District Vice President shall be the Chairman of all District Executive Committee meetings.

(b) Each member of the District Executive Committee, except as otherwise provided in these By-Laws, shall be entitled to cast one vote in that body. Its decision shall be determined by majority vote of those voting, providing a majority of its members are present constituting a quorum.

(c) It shall be the duty of the District Executive Committee to develop policies, strategies and rules which shall advance and protect the interests and welfare of the District and the members. The adoption of any such recommendation by a majority vote of the District Executive Committee shall make the provisions thereof binding District policy, unless modified or otherwise altered by a majority vote of the membership, provided such recommendation is not inconsistent with the provision of these By-Laws.

(d) The Secretary-Treasurer, or in his absence an appointee of the District Executive Committee, shall keep accurate minutes of all meetings of the District Executive Committee.

(e) The District Executive Committee shall determine; subject to the National Constitution, the terms and conditions of affiliation for any group of workers desiring affiliation.

(f) The District Executive Committee shall be responsible for all contract negotiations, the formulation of bargaining de-

mands and the submission of proposed collective bargaining agreements to the membership for ratification.

(g) The District Executive Committee shall direct the administration of all District affairs, properties, policies and personnel in any and all areas including those not otherwise specifically provided for in these By-Laws.

(h) The District Executive Committee shall have such other powers, duties and authority conferred upon District Executive Committee by the National Constitution.

(i) Notwithstanding the foregoing, the District Executive Committee may act without holding a formal meeting provided all members of the District Executive Committee are sent notice of the proposed action or actions and the decision of each member voting is reflected by a document and the action is approved by a majority of those voting thereon.

(j) The District Executive Committee shall designate from among its members a Subcommittee, of which the District President, the District Vice President and the Secretary-Treasurer must be members, and which Subcommittee shall have the right, between meetings of the District Executive Committee to exercise all of the powers, duties and responsibilities of the District Executive Committee.

(k) The District Executive Committee shall have the authority, for reasons con-

sistent with the best interests of the District, to assign to the Branch Agents and elected Patrolmen such duties as it may determine including their temporary transfer of assignment among the Branches, for the efficient and effective administration of the affairs of the District Organization, unless otherwise directed by a majority vote of the membership.

(l) The District Executive Committee shall have the authority, whenever it may determine that it is in the best interest of the membership, to submit to a referendum vote among the membership any issue, policy or action. The vote thereon shall have the same binding effect as a vote by a majority of the membership. Any such referendum shall be conducted in accordance with the procedure outlined in these By-Laws for elections except that the time and duration of the vote and all other pertinent details shall be set by the District Executive Committee.

Section 7. Meeting Chairman

(a) The Branch Agent in each Port, including Headquarters, as the officer in charge of the Branch, shall be the presiding officer of all membership meetings. In his absence, the Patrolman of the Branch, if any, shall serve or if none, the membership at the meeting shall elect their Chairman for the meeting.

(b) He shall keep order under rules of order as provided in the National Constitution.

(c) The Meeting Chairman may cast a vote only in the event of a tie.

(d) The District President shall have the right to act as Chairman of any meeting in any Branch and the District Vice President shall have the right to act as Chairman of any meeting in any Branch in the Gulf area.

Section 8. Committees

(a) Trial Committee
Trial Committee shall conduct trials of persons charged and shall submit findings and recommendations as prescribed in these By-Laws and the National Constitution. It shall be the special obligation of the Trial Committee to observe all the requirements of these By-Laws and the National Constitution with regard to charges and trials and their findings and recommendations must specifically state whether or not, in the opinion of the Trial Committee, the rights of any accused, under these By-Laws and the National Constitution, were properly safeguarded.

(b) Appeals Committee
Appeals Committee shall hear and determine all appeals from trial judgments, in accordance with such procedures as are set forth in these By-Laws and such rules as may be adopted by a majority vote of the membership not inconsistent therewith.

(c) Strike Committee
1. In no event shall a general strike take place unless approved by a majority vote of the membership.

2. In the event a general strike has been approved by the membership, the Branch Agents in all affected Ports shall call a timely special meeting for the purpose of electing a strike committee. This committee shall be composed of three (3) members and their duties shall consist of assisting the Branch Agent to effectuate all strike policies and strategies.

3. The District Executive Committee shall decide when any strike shall begin and shall be charged with the preparation, execution and termination of the strike plan which shall be binding on all members of the District.

4. In no event shall any strike committee obligate this District or any Branch hereof in any manner without the approval of the District Executive Committee.

ARTICLE VII

Wages, Terms of Office of Officers and Other Elective Job Holders, Employees and Others

Section 1. The following elected offices and jobs shall be held for a term of three years: District President, District Vice President, Branch Agent and Patrolmen (when elected).

Section 2. The term of any elective job, other than those indicated in Section 1 of this Article, shall continue for so long as is necessary to complete the functions thereof, unless sooner terminated by a majority vote of the

membership or segment of the District, whichever applies, whose vote was originally necessary to elect the one or ones serving.

Section 3. The compensation to be paid all officers shall be determined, from time to time by the District Executive Committee, unless otherwise directed by a majority of the membership.

Section 4. Paid officials of the District shall devote their full time to their official duties.

Section 5. Unless otherwise ordered by a majority vote of the membership, all other classifications of employees shall be hired or discharged as well as compensated in the discretion of the District President subject to the authority of the District Executive Committee.

Section 6. Unless otherwise ordered by a majority vote of the membership, the District President may contract for, or retain, the services of any person, firm or corporation, not employees of the District, when he deems it necessary in the best interests of the District, subject to the authority of the District Executive Committee.

ARTICLE VIII

Vacancies in Office

Section 1. In the event the District President shall be unable to carry out his duties by reason of death, resignation or removal from office, or any other reason, the District Vice President shall assume the office of District President until the next regular election.

Section 2. In the event a vacancy shall occur simultaneously in the offices of District President and District Vice President, or in the office of District Vice President, the District Executive Committee by majority vote shall name successors from its own membership, who shall fill those vacancies until the next general election.

Section 3. In the event the District Vice President has duly assumed the office of the District President and a vacancy thereafter occurs in his office, the District Executive Committee shall elect a successor from its own membership to fill the vacancy until the next general election.

Section 4. If a vacancy occurs in the office of any other elected officer of the District, the District Executive Committee shall designate a successor, who must otherwise be qualified to fill said office, until the next general election; provided that if any such vacancy or vacancies occur within 18 months following the installation of officers elected at the regular general election, a special election shall be held to fill any such vacancy or vacancies immediately after the expiration of said 18 month period.

Section 5. In the event the National Constitution requires that any such successor must be elected through a referendum vote or membership meeting, such election shall be duly held and the appointee designated by the District Executive Committee shall serve until the successor has been elected and installed in office.

ARTICLE IX

Qualifications for Officers and All Elective Jobs

Section 1. Eligibility requirements for all elective offices of this District requiring a District-wide vote of the membership shall be as provided in the National Constitution.

Section 2. The District Vice President must also be an elected Branch Agent from the Gulf area and may remain in office of District Vice President only so long as he continues as said Branch Agent.

Section 3. Eligibility requirements for other elective jobs not covered by the foregoing Sections shall be membership in good standing.

Section 4. All candidates for and holders of elective offices and jobs, whether elected or appointed in accordance with these By-Laws, shall maintain membership in good standing. Failure to do so shall result in ineligibility to hold such office or jobs and shall constitute an incapacity with regard to such office or job.

ARTICLE X

Elections for District-wide Offices

Section 1. Nominations. Any member may submit his name for nomination for the offices of District President, District Vice President, Branch Agent, Patrolman (where being elected) or Representative to the National Convention by delivery in person or sending by registered mail, a letter addressed to the Credentials Committee in care of the District

President at the address of Headquarters in New York.

The District President is charged with the safe keeping of these letters and shall turn them over to the Credentials Committee upon the latter's request.

The letter shall be dated and contain the following:

(a) The full name of the candidate and, if he wishes, any special name to appear on the ballot.

(b) His home address and mailing address

(c) The number of his last dues receipt and the name of the Branch where he last paid his dues.

(d) The title of the office or other job for which he is a candidate, including the name of the Branch in the event the position sought is that of Branch Agent or Patrolman

(e) Serial number, issue number, date and port issue of his license

(f) Annexing a certificate in the following form, signed and dated by the proposed nominee:

"I hereby certify that I am not now, nor for the five (5) years last past, have I been either a member of the Communist Party or convicted of, or served any part of a prison term resulting from conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or violation to title II

or III of the Landrum-Griffin Act, or conspiracy to commit any such crimes."

Dated: .....
Signature of Member

Printed forms of the certificate shall be made available to nominees. Where a nominee cannot truthfully execute such a certificate, but in fact, is legally eligible for an office or job by reason of the restoration of civil rights originally revoked by such conviction or a favorable determination by the Board of Parole of the United States Department of Justice, he shall, in lieu of the foregoing certificate, furnish a complete signed statement of the facts of his case together with true copies of the documents supporting his statement.

The letter must reach Headquarters in New York but not prior to the June meeting and no later than the July meeting of the election year.

Section 2. Credentials Committee

(a) A Credentials Committee of three members and two alternates who are in attendance shall be elected at the regular July Meeting held in the Ports of New York, Baltimore, New Orleans, Norfolk and Houston. One member shall be elected at each of the meetings at the New York Branch, Baltimore Branch and New Orleans Branch and one alternate shall be elected at each of the meetings at the Norfolk Branch and Houston Branch.

No officer or candidate for office shall be eligible for election to this Committee. The Committee's results

shall be by majority vote with any tie vote being resolved by a majority vote of the membership at a special meeting called for that purpose at all Branches.

(b) After its election, the Committee shall immediately go into session. It shall determine whether the person has submitted his application correctly and possesses the necessary qualifications. The Committee shall prepare a report listing each applicant under the office or job he is seeking. Each applicant shall be marked "qualified" or "disqualified" according to the findings of the Committee. Where an applicant has been marked "disqualified" the reason therefor must be stated in the report. Where a tie vote has been resolved by a special meeting of the membership, that fact shall also be noted, with sufficient detail. The report shall be signed by all of the Committee members, and be completed and submitted to the Branches in time for the next regular meeting following the election of the Credentials Committee. At this regular meeting, the report shall be read and incorporated in the minutes, and then posted on the bulletin board in each Branch.

(c) When an applicant has been disqualified by the Credentials Committee, he shall be notified immediately by telegram at the address listed by him in his letter of nomination. He shall also be sent a letter containing the reasons for such disqualification by air mail, special delivery, registered, to the same mailing address. A disqualified appli-

cant shall have the right to take an appeal to the membership from the decision of the Committee. He shall forward copies of such appeal to each Branch, where the appeal shall be presented and voted upon at a regular meeting no later than the first regular meeting after the Committee's election. It is the responsibility of the applicant to insure timely delivery of his appeal. In any event, without prejudice to his written appeal, the applicant may appear in person before the Committee within two days after the day on which the telegram is sent, to correct his application or argue for his qualification.

The Committee's report shall be prepared early enough to allow the applicant to appear before it within the time set forth in these By-Laws and still reach the Branches in time for the first regular meeting after its election.

(d) A majority vote of the membership shall, in the case of such appeals, be sufficient to overrule any disqualification classification by the Credentials Committee, in which event the one so previously disqualified shall then be deemed qualified.

Section 3. Balloting Procedure

(a) The District President shall insure the proper and timely preparation of ballots without partiality as to candidates or Branches. The names of the candidates for each separate office or job shall appear in alphabetical order. The names of all candidates shall be numbered in sequence commencing with the first

name under the first office and ending with the last named candidate under the last office. In the case of Branch Agents and Patrolmen, the Branches shall be listed in the following order: New York, New Orleans, and the remaining Branches in alphabetical order.

The ballots may contain voting instructive comments not inconsistent with the provisions of these By-Laws.

(b) The ballots so prepared at the direction of the District President shall be the only official ballots. No others may be used. A sufficient amount shall be printed and distributed. A record of the ballots distributed shall be maintained by the District President.

(c) Ballots must be cast by mail to a predetermined depository as provided in ARTICLE VI, SECTION 1, secured and paid for by the District. Secrecy of the ballots must be assured. No signature of any voter or other distinguishing mark shall appear on the ballot.

(d) No member may vote unless he is in good standing as of 15 days immediately preceding the closing of the balloting.

(e) Voting shall commence on September 1st and shall continue until November 30th inclusive. If September 1st or November 30th fall on a holiday, or a Sunday, balloting shall commence or end, as the case may be, on the next succeeding business day. Ballots not received in the depository when the ballots are collected, as provided in Section 4, shall be disqualified.

(f) A member shall be entitled to write in for a duplicate ballot and receive the same provided he states in his letter that he has not received his ballot or that his ballot has been lost or mutilated so that it can not be used. All duplicate ballots shall be marked either by color or serial number to identify them as such. Duplicate ballots shall be counted unless the original and duplicate ballot mailed to a member are both cast in which event neither ballot shall be counted.

(g) The District President, subject to the approval of the District Executive Committee, shall designate an Impartial Administrator to supervise the conduct of the election. The Duties of such Impartial Administrator shall include: the mailing of the ballots, assuring the secrecy of and non-accessibility to the depository during the election, the mailing of duplicate ballots on written requests from members, supervising the ballot collection, and the tallying procedure with the Tallying Committee and to take such other measures as he may deem necessary to assure a fair and impartial election.

Section 4. Ballot Collection, Tallying Procedure, Protests and Special Votes

(a) A Tallying Committee of five members and three alternates who are in attendance shall be elected at a special meeting held in the Ports of New York, Norfolk, Philadelphia, Houston, Galveston, Baltimore, New Orleans and Boston one week prior to the December meet-

ing of the election year. One member shall be elected at each of the meetings at the New York Branch, Norfolk Branch, Philadelphia Branch, Galveston Branch and Houston Branch, and one alternate shall be elected at each of the meetings at the Baltimore Branch, Boston Branch and New Orleans Branch. No officer or candidate for office shall be eligible for election to this Committee.

The elected Tallying Committee of five men and the Impartial Administrator shall, on the morning of the regular December meeting, proceed to the depository and obtain all the ballots which shall be retained in a sealed or locked container and brought to the New York Headquarters where it shall remain sealed or locked and in the custody of the Tallying Committee and the Impartial Administrator until such time as the container is opened and the ballots are checked and counted.

(b) The Impartial Administrator and the Tallying Committee are charged with the tally of all the ballots and the preparation of a report setting forth in complete detail the results of the election, including a complete accounting of all ballots, and reconciliation of the same with rosters and verification lists of membership. The report shall clearly detail all discrepancies discovered and shall contain recommendations for the treatment of these discrepancies. The Impartial Administrator and all members of the Committee shall sign the report, without prejudice, however, to

the right of any member thereof to submit a dissenting report as to the accuracy of count and the validity of the ballots, with pertinent details.

(c) The Impartial Administrator and the Tallying Committee are also charged with the receipt and evaluation of written protests by any member who claims an illegal denial of the right to vote. If they find the protest invalid, they shall dismiss the protest and so inform the protesting member, by wire, on the day of dismissal. If they find the protest valid, the Impartial Administrator and the Committee shall permit such member on such terms as may be practical to cast his vote. The reports of the Impartial Administrator and this Committee shall include a brief summary of each protest received, the name of the protesting member, and a summary of the disposition of the said protest.

(d) The Impartial Administrator and the Tallying Committee shall commence their work on the day that the ballots are collected and shall complete their work as quickly as possible. The reports of the Impartial Administrator and the Tallying Committee shall be filed no later than 24 hours following the completion of the count.

Each member of the Committee and the Impartial Administrator shall be paid at the rate of pay determined by the District Executive Committee, unless otherwise ordered by a majority vote of the membership. The proceedings of the Committee, except for the

actual preparation of the Report and dissents therefrom, if any, shall be open to any member.

(e) A majority of the membership, at the election report meeting may order a recheck and a recount where a dissenting report has been issued by one or more members of the Tallying Committee.

(f) In the event of a tie vote for office of District President, the District President shall, within 10 days, direct a run off election among the candidates receiving the tie vote; and in the event of a tie vote for any other office, the membership at the next regular meeting shall, by secret ballot, vote on the candidates who received the tie vote. The candidate receiving the highest vote shall be deemed elected.

(g) All reports of the Impartial Administrator, the Tallying Committee and the District President under this Article shall be entered in the minutes of all Branches.

Section 5. Installation into Office

(a) The person elected shall be that person having the largest number of votes cast for the particular office or job involved except that in case of the District Vice President, it shall be the person receiving the largest vote and also has been elected a Branch Agent from a Branch in the Gulf area. Where more than one person is to be elected for a particular office or job, the proper number of candidates receiving the successively

highest number of votes shall be declared elected. It shall be the duty of the District President to notify each individual elected.

(b) The duly elected District President, District Vice President, Branch Agents, Patrolmen, and Representatives to the National Convention shall take over their respective offices and jobs, and assume the duties thereof at midnight December 31st. At that time, the terms of their predecessors shall expire. This shall not apply where the successful candidate cannot assume his office because he is at sea, or any other reason which the District Executive Committee shall determine as just cause, in which event the incumbent shall remain in office until the successful candidate assumes office. If he does not assume office within 90 days, unless such period is extended by the District Executive Committee for just cause, the line of succession shall apply until the expiration of the term. All other cases of failure to assume office shall be dealt with as decided by a majority vote of the membership.

(c) Before assuming office, every officer shall take the following oath:

"I, ...,
do hereby sincerely pledge my honor to perform the duties of my office as prescribed by the National Constitution and the By-Laws of this organization, and to uphold these Constitutions to the best of my ability. I will deliver to my successor in office all books, papers and

other property of this District that may be in my possession at the close of my official term. Further, I do solemnly swear (or affirm) that I am not a member of a Communist Party or any organization which advocates the overthrow of the Government of the United States by force, violence or other subversive or unconstitutional methods, and during my term of office, I will not knowingly aid or support the activities of any such party or organization.

All this I solemnly promise with the full knowledge that to violate this pledge, is to stamp me as a person devoid of principle and destitute of honor."

(d) The District President is specifically charged with the preservation and retention of all election records, including the ballots, as required by law and is directed and authorized to issue such other and further directions as to the election procedures as are required by law, which directives shall be part of the election procedures of this District.

Section 6. Notice to the membership for nominations and elections to be held must be given in accordance with provisions of the National Constitution.

ARTICLE XI

Other Elections

Section 1. Trial Committee. A Trial Committee shall be elected at a regular meeting of the Branch where the trial is to take place. It shall consist of three members, of which

two shall constitute a quorum. No officer or employee may be elected to serve on a Trial Committee. No member who intends to be a witness in the pending trial may serve. It shall be the duty of every member to decline nomination if he knows, or has reason to believe, the foregoing disqualification applies to him. The members of this Committee shall be elected under such generally applicable rules as are adopted by a majority vote of the membership.

Section 2. Other Committees. Unless otherwise specified herein, all Committees shall be elected when and as required.

Section 3. Other Elections. In the event an election shall be held for an elective office other than the regular election, the same procedures and time requirements provided for the regular election shall be adopted.

ARTICLE XII

Code of Trial by Charges

Section 1. The filing of any charges against a member and the holding of a trial thereon shall be governed by the applicable provisions of the National Constitution.

Section 2. The written charges shall be presented to the Branch Agent of the Port nearest the place of the offense or the Port of payoff if the offense took place aboard the vessel. The Branch Agent shall cause the charges to be read at the meeting of the Branch.

Section 3. If the charges are rejected by a majority vote of the Branch, no further action

may be taken thereon unless ruled otherwise by a majority vote of the membership of the Union within 90 days thereafter.

In the event a majority of the membership of the Union shall vote to accept charges after their rejection by a Branch, the trial shall take place in either the New York or New Orleans Headquarters, whichever is closest to the Port where the original vote was taken.

Section 4. The Trial Committee after the hearing shall forward its full report to the Branch Agent of the Port where the trial has taken place.

The Branch Agent shall cause such report to be presented and entered into the minutes at the next regular meeting. In addition, he shall send the record of the entire proceedings to New York Headquarters which shall cause a fair summary to be made. Such summary and the report of the Trial Committee shall be sent to each Branch in time for the next regularly scheduled meeting.

Section 5. A majority vote of the membership shall determine the disposition of the case and the penalty to be imposed if the charged person is held guilty.

In the event a new trial is ordered by a majority vote of the membership, it shall be held at New York or New Orleans Headquarters, whichever is closer to the Port where the original trial was held.

Section 6. An accused who has been found guilty, or is under effective punishment, may appeal in the following manner:

He may send or deliver a notice of appeal to the New York Headquarters within 30 days after receipt of the notice of the decision of the membership.

Section 7. The Appeals Committee shall consist of three elected officials of the District serving in the Headquarters in New York. The Appeals Committee shall consider all available documents used as evidence at the trial, as well as any written statement or argument submitted by the accused. The accused may argue his appeal in person, if he so desires.

Section 8. The Appeals Committee shall decide the appeal as soon as possible, consistent with fair consideration of the evidence and arguments before it. It may grant adjournments and may request the accused or accusers to present arguments whenever necessary for such fair consideration.

Section 9. The decision of the Appeals Committee shall be by majority vote, and shall be in the form of findings and recommendations. Dissents will be allowed. Decisions and dissents shall be in writing and signed by those participating in such decision or dissent. In making its findings and recommendations, the Appeals Committee shall be governed by the following:

(a) No finding of guilt shall be reversed if there is substantial evidence to support such a finding and, in such case, the Appeals Committee shall not make its own findings as to the weight of evidence.

(b) In no event shall increased punishment be recommended.

(c) A new trial shall be recommended if the Appeals Committee finds—(1) that any member of the Trial Committee should have been disqualified, or (2) that the accused was not adequately informed of the details of the charged offense, which resulted in his not having been given a fair trial, or (3) that for any other reason, the accused was not given a fair trial.

(d) If there is not substantial evidence to support a finding of guilt, the Appeals Committee shall recommend that the charge on which the finding was based be dismissed.

(e) The Appeals Committee may recommend lesser punishment.

Section 10. The Appeals Committee shall deliver its decision and dissent, if any, to the New York Headquarters, which shall cause sufficient copies to be published and shall have them sent to each port in time to reach there before the next regular scheduled meeting. The New York Headquarters shall also send a copy to each accused and accuser at their last known address, or notify them in person.

Section 11. At such regular scheduled meeting, the membership, by a majority vote, shall accept the decision of the Appeals Committee, or the dissent therein. If there is no dissent, the decision of the Appeals Committee shall stand.

If a new trial is ordered, it shall be held at New York or New Orleans Headquarters, whichever is closer to the Port where the original trial was held. Any decision so pro-

viding for a new trial shall contain such directions as will insure a fair hearing to the accused.

Section 12. A further appeal may be taken, as provided in the National Constitution.

Section 13. Every accused shall receive a written copy of the charges preferred against him and shall be given a reasonable time to prepare his defense but he may plead guilty and waive any or all of the other rights and privileges granted to him under the National Constitution and accept such penalty as may be imposed by the Trial Committee.

ARTICLE XIII

Bonds

Officers and job holders, whether elected or appointed, as well as all other employees handling monies of the District, shall be bonded as required by law.

ARTICLE XIV

Expenditures

Section 1. In the event no contrary policies or instructions are in existence, the District President may authorize, make or incur such expenditures or expenses as are normally encompassed within the authority conferred upon him by these By-Laws unless otherwise determined by a majority vote of the membership.

Section 2. Checks drawn on bank accounts of the District must be signed by two elected officers, one of whom must be either the District President or the Secretary-Treasurer.

ARTICLE XV

Income

Section 1. The income of this District shall include dues, initiation fees, fines, assessments, loans, interest, dividends as well as income derived from any other legitimate business operation or other legitimate source.

Section 2. An official District receipt, properly filled out, shall be given to anyone paying money to the District or to any person authorized by the District to receive money. It shall be the duty of every person affiliated with the District who makes such payments to demand such receipts.

Section 3. No assessments shall be levied except after a membership referendum ballot conducted under such general rules as may be decided upon by the District Executive Committee unless otherwise directed by a majority vote of the membership, provided that:

(a) The ballot must be secret.

(b) The assessment must be approved by a majority of the valid ballots cast.

Section 4. Except as otherwise provided by law, all payments by members or other affiliates of this District shall be applied successively to the monetary obligations owed to the District commencing with the oldest in point of time, as measured from the date of accrual of such obligation. The period of arrears shall be calculated accordingly.

ARTICLE XVI

Other Types of District Affiliation

To the extent permitted by law and the National Constitution, this District, by decision of the District Executive Committee unless otherwise directed by a majority vote of the membership, may provide for affiliation with it by individuals in a lesser capacity than membership, or in a capacity other than membership. The District Executive Committee, unless otherwise directed by a majority vote of the membership, may provide for the rights and obligations incident to such capacities or affiliations. These rights and obligations may include, but are not limited to (a) the applicability or non-applicability of all or any part of these By-Laws; (b) the terms of such affiliation; (c) the right of the District to peremptory termination of such affiliation and, (d) the fees required for such affiliation. In no event may anyone not a member receive evidence of affiliation equivalent to that of members, receive priority of rights over members, or be termed a member.

ARTICLE XVII

Shipping Rules

Section 1. The formulation of shipping rules shall not be deemed part of any routine administrative task. Shipping rules, governing the details of the assignment of jobs and governing conduct and procedure connected therewith, shall be approved by a referendum vote of the membership. Shipping rules duly issued shall be deemed to be District policy.

Section 2. The District Executive Committee, unless otherwise directed by a majority vote of the membership, may make special exceptions or rules for any company or vessel, for organizational purposes.

ARTICLE XVIII

Quorums

Section 1. Unless elsewhere herein otherwise specifically provided, the quorum for a special meeting of a Branch shall be five (5) members.

Section 2. The quorum for a regular meeting of a Branch shall be seven (7) members.

Section 3. The quorum for the District Executive Committee shall be a majority of those eligible to attend.

Section 4. Unless otherwise specifically set forth herein, the quorum for any committee shall be the majority of those duly elected or appointed thereto.

Section 5. Unless otherwise specifically set forth herein, the decisions, reports, recommendation or other functions of any segment of the District requiring a quorum to act officially, shall be that of the majority of the quorum, and shall not be official or effective unless the quorum requirements are met.

ARTICLE XIX

Meetings

Section 1. Regular membership meetings shall be held monthly in the Branches at the following times:

During the week following the first Sunday of every month a meeting shall be held on Monday—at Norfolk and Galveston; on Tuesday—at Baltimore and Houston; on Wednesday—at Philadelphia and New Orleans; on Thursday—at New York and Tampa; on Friday—at Boston, Jacksonville, Miami and Mobile.

Section 2. All regular membership meetings in the several ports shall commence betwen 1 P.M. and 2:30 P.M. Local Time, as initially fixed by each Branch; and in New York at 7 P.M. Local Time. If such meeting days falls on a Holiday, the meeting shall take place at the same time, the following week day.

In the event no quorum is present at the designated time, the Chairman shall postpone the opening of the meeting until a quorum is present but in no event more than one-half hour later.

Section 3. A special meeting of a Branch may be called only at the direction of the District President or the District Vice President or the Branch Agent of said Port. No special meeting may be held except between the hours of 9 A.M. and 5 P.M. Notice of such meeting shall be posted at least 2 hours in advance on the Branch bulletin board.

Section 4. Notwithstanding anything to the contrary, all regular and special meetings shall be governed by the following:

The National Constitution, these By-Laws and Robert's Rules of Order where applicable.

ARTICLE XX

Definitions

Section 1. Unless otherwise set forth or dealt with herein, the term "incapacity" shall mean any illness or situation preventing the affected person from carrying out his duties for more than 30 days, provided that this does not result in a vacancy. However, nothing contained in this Article shall be deemed to prohibit the execution of the functions of more than one job and/or office in which event no incapacity shall be deemed to exist with regard to the regular job or office of the one taking over the duties and functions of the one incapacitated. The period of incapacity shall be the time during which the circumstances exist.

Section 2. Unless otherwise set forth or dealt with herein, the term "vacancy" and the term "vacancy not caused by an incapacity" shall be deemed to be the same, and shall include failure to perform the functions of any office or job by reason of death, or resignation, or expulsion from the Union, with no further right to appeal, in accordance with the provisions of the National Constitution and these By-Laws.

Section 3. When applicable to the District as a whole, the term "majority vote of the membership" shall mean the majority of all the valid votes cast by members at an official meeting of those Branches holding a meeting. This definition shall prevail, notwithstanding that one or more Branches cannot hold meetings because of no quorum. Unless otherwise specified herein, the term "meeting" shall refer to a meeting or meetings during the time

period within which a vote must be taken, in accordance with:

(a) The Constitution and By-Laws

(b) District Policy, and

(c) Custom and usage of the District, in the indicated priority.

Section 4. When applicable solely to Branch action and not concerned with, or related to District action as a whole, and not forming part of a District-wide vote, the term "majority vote of the membership" shall refer to the majority of the valid votes cast by the members at any meeting of the Branch, regular or special.

When applicable to the Executive Board, "majority vote" or "majority vote of the Executive Board" shall mean a majority of the votes actually cast.

Section 5. The term "membership action" shall mean the same as the term "majority vote of the membership."

Section 6. Where the title of any office or job, or the holder thereof, is set forth in these By-Laws, all references thereto and the provisions concerned therewith shall be deemed to be equally applicable to whomever is duly acting in such office or job.

Section 7. The "Election Year" shall be deemed to mean that calendar year prior to the calendar year in which elected officials and other elected jobholders are required to assume office. The first election year shall be deemed to be 1963.

Section 8. The term "member in good standing" shall mean a member not in arrears or under suspension or sentence of expulsion. Unless otherwise expressly indicated, the term "member" shall mean a member in good standing.

Section 9. The term "membership book" shall mean any official certificate issued as evidence of Union membership.

Section 10. The term "Headquarters", unless otherwise indicated shall mean the offices in New York and New Orleans.

Section 11. The term "National Constitution" shall mean the National Constitution of the National MEBA.

The term "By-Laws" shall mean the By-Laws of this District.

ARTICLE XXI

Amendments

These By-Laws may be amended in the following manner:

(a) The District Executive Committee may propose and submit to the membership proposed amendments which if approved by a majority vote of the membership shall be deemed adopted.

(b) Any member may submit, at any meeting of any Branch, proposed amendments to these By-Laws in resolution form. If a majority vote of the membership of the Branch approves it, the proposed amendment shall be forwarded to all Branches for further action.

When a proposed amendment is accepted by a majority vote of the membership, it shall be referred to New York Headquarters. A Constitutional Committee composed of five members shall be elected in accordance with such rules as are established by the District Executive Committee. The Committee will act on all proposed amendments referred to it. The Committee may receive whatever advice and assistance, legal or otherwise, it deems necessary. It shall prepare a report on the the amendment, together with any proposed changes, substitutions or recommendations, and the reasons for such recommendations. The latter shall then be submitted to the membership by the District President. If a majority vote of the membership approves the amendment as recommended, it shall then be voted upon, in a yes or no vote, by the membership of the District by secret ballot, in accordance with the procedure outlined for elections, except that the time and duration of the vote shall be set by a majority vote of the membership. The amendment shall either be printed on the ballot or, if too lengthy, shall be referred to on the ballot. Copies of the amendment shall be posted on the bulletin boards of all Branches.

If approved by a majority of the valid ballots cast, the amendment shall become effective immediately upon notification, by the Tallying Committee, to the District President that the amendment has been so approved, unless otherwise specified in the amendment. The District President shall immediately notify all Branches of the results of the vote on the amendment.

ARTICLE XXII

Transition Clause and Effective Date

Section 1. It is the purpose and intent of these By-Laws to provide for an orderly transition from the operations and activities of the Subordinate Associations of the Atlantic and Gulf Districts as governed by their respective By-Laws to the operations and activities of the new District conducted in accordance with these By-Laws.

Section 2. The District Executive Committee shall have full power and authority to make such decisions and interpretations which in its discretion may be necessary to accomplish such orderly transition.

Section 3. The effective date of this organization and of these By-Laws shall be January 1, 1961.

Amended September, 1962,
by Referendum Ballot.

[fol. 59]

EXHIBIT "B" TO AFFIDAVIT OF JESSE M. CALHOON

CONSTITUTION OF NATIONAL MARINE ENGINEERS BENEFICIAL ASS'N.

(As Amended by the 85th National Convention, May 1962).

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ARTICLE X

Districts and Subordinate Associations

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Section 9. Eligibility for Office in Districts. Any person may hold elective office in a District, who (1) has been a member in good standing at all times for twenty-four consecutive months immediately preceding nomination in said District or from the date of issuance of the Charter to the District, if such District has not been in existence for two years, and (2) is not employed or acting as salesman of any commodity of any character whatsoever, whether as agent or representative of any firm or firms in the marine field, provided, however, that (3) no member who is a member of, or supports an organization that favors a totalitarian form of government, or who is a member of or supports an organization which advocates the overthrow of the Government of the United States by force or violence may hold elective, or appointive office in any District.

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[fol. 60]

EXHIBIT "C" TO AFFIDAVIT OF JESSE M. CALHOON

CONSTITUTION OF NATIONAL MARINE ENGINEERS BENEFICIAL ASS'N

(As Amended by the 86th National Convention, March, 1963)

PREAMBLE

We, the members of the National Marine Engineers' Beneficial Association of the United States of America, believe in the United States as a government of the people, by the people and for the people whose just powers are derived from the consent of the governed; a democracy in a republic, a sovereign nation of many sovereign states, a perfect Union, one and inseparable, established upon those principles of freedom, equality, justice and humanity for which American patriots sacrificed their lives.

We, therefore, believe it is our duty to our country to love it, to support its Constitution, to obey its laws to respect its flag and to defend it against all enemies.

ARTICLE I

Name and Composition

This Association shall be known as the National Marine Engineers' Beneficial Association, A.F.L.-C.I.O., hereinafter referred to as the "National Association."

ARTICLE II

Objects and Jurisdiction

Section 1. The objects and purposes of this Association shall be to elevate and maintain the rights and advance and safeguard the economic and working conditions of marine engineers under its jurisdiction and otherwise labor for their better protection and advancement.

Section 2. The jurisdiction rights of the National Association shall extend to all vessels, boats, barges, scows, or any other craft flying the American flag, the Canadian flag, or to any vessel regardless of flag, where such vessel is owned, operated or controlled by American interests propelled by steam, gas, oil, electricity or machinery of any kind.

ARTICLE III

Eligibility for Membership

Section 2. The jurisdictional rights of the National Asso-

moral character and known qualifications who are citizens of the United States shall be eligible for full book membership after having completed the requirements for probationary membership.

(a) All marine engineers who have been licensed by the Bureau of Marine Inspection, U. S. Coast Guard, to serve as such on vessels of the United States.

(b) Marine engineers regularly serving on Commercial Motor vessels operating in inland waters where license requirements have not been established by the Bureau of Marine Inspection and Navigation.

(c) Any engineer whose United States marine license is valid, though he engage in another vocation, is eligible for membership.

(d) Persons holding an operator's certificate, or having actually been employed as an engineer on Diesel craft and having known qualifications as a Diesel engineer shall be eligible to membership in the National Association.

Section 2. Marine engineers of good moral character and known qualifications who are nationals of Canada will be eligible for membership in the National Marine Engineers' Beneficial Association, providing that such Engineers are licensed or certificated Marine Engineers under the laws of Canada. Marine Engineers who are nationals of other countries and working on vessels regardless of Flag, owned, operated or controlled by American interests, shall also be eligible for membership.

For the purpose of determining the character and qualifications of applicants for membership, applicants may be required to assume a probationary status, for an indefinite period of time in accordance with Rules for probationary members, which Rules shall be promulgated by the National Executive Committee.

Section 3. The National Executive Committee may promulgate rules and regulations with respect to the conditions upon which (a) any applicant for membership who is also a member of an unlicensed seafaring union will be accepted into membership and (b) any member who is also a member of an unlicensed seafaring union may continue such membership or be compelled to discontinue the same.

Any engineer engaged in a deliberate infiltration into non-contract companies for the purpose of organizing, who has to join another organization for this purpose, and who has written letter of instruction, signed by the proper person, with due authority, shall not be subject to charges of dual Unionism.

Section 4. All Districts shall be limited with regards to the number of applicants who may be taken in, in the course of a fiscal year. There shall be established a quota which will permit a District to take into membership in each fiscal year as either new members, members reinstating membership, or members depositing withdrawal cards, an amount not to exceed a total of two percent of the total membership of the District in question as reported in the current annual report for the particular year to the National Association.

Where there may be applicants in excess of the quota, membership shall be regulated by the date on which full payment of the necessary fees are completed.

At the request of a District, the National Executive Committee may within its discretion suspend the quota regulations for one or more Districts for the purpose of organizing or in such cases as it may determine to be necessary.

ARTICLE IV

National Association Officers

Section 1. The officers of the National Association shall consist of a President and Secretary-Treasurer and three National Executive Vice Presidents.

Section 2. At each convention of this National Association the President in office shall appoint a Chaplain, Doorkeeper, Conductor and such other appointive officers as this National Association may require, whose term of office shall expire with the closing of the convention.

National Administrative Committee

Section 3. There shall be established in the National office, a National Administrative Committee consisting of the National President, National Secretary-Treasurer and three Executive Vice-Presidents.

ARTICLE V

Nomination and Election of National Officers

Section 1. The National officers, other than the National Executive Vice Presidents, shall be elected every 5 years commencing with the election in 1963. This election shall be by referendum vote and secret ballot.

Section 2. The National officers, other than the National Executive Vice Presidents, shall be elected by plurality vote of the general membership in good standing who shall vote in each election.

Each of the Presidents of District 1, District 2 and the Pacific Coast District shall, by virtue of their election as District President, be deemed elected as a National Executive Vice President, and the ballot for election of District President shall so provide.

In the event the District President of any such District is also a National officer, the District Executive Committee of such District shall designate the individual who shall serve as a member of the National Administrative Committee until the next regular National Convention at which time the Convention shall elect an additional National Ex-

ecutive Vice President. The individual so designated, while serving as a member of the National Administrative Committee, must be a member of the National Executive Committee.

Section 3. Any member shall be eligible for nomination to and election as a National officer provided (a) he is at the time of nomination and election a member in good standing; and (b) he has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of the closing of nominations; and (c) he has previously served as a full time, paid elected official of the National Association or of a Subordinate Association. No member can accept nomination to or be a candidate for more than one office in any National election.

No member shall, while serving in office, be receiving a pension under any MEBA Pension Plan.

No member of the National Association may hold any National office or be appointed on a National Committee who was a member of, or supports an organization which favors a totalitarian form of government or who is a member of, or supports an organization which advocates the overthrow of the Government of the United States by force or violence or is disqualified by law.

Section 4. Any member may submit his name for nomination for any National office by delivering in person or sending by registered or certified mail, a letter addressed to the National Balloting Committee, in care of the National President at the address of the National Headquarters of the National Association, making such nomination.

The National President is charged with the safekeeping of these letters and shall turn them over to the National Balloting Committee upon the latter's request.

The letter shall be dated and contain the following information:

(a) The full name of the candidate and, if he wishes, any special name to appear on the ballot;

(b) His home address and mailing address;

(c) The number of his last dues receipt and the name of the Branch or District Headquarters where he last paid his dues;

(d) The title of the national office for which he is a candidate;

(e) Serial number, issue number, date and port issue of his license;

(f) Unlicensed union or unions to which nominee belonged and approximate date of joining the same;

(g) Date of joining the MEBA and the Subordinate Associations or other affiliated body in which he has been a member; and

(h) Annexing a certificate in the following form, signed and dated by the proposed nominee:

"I hereby certify that I am not now, nor for the five (5) years last past, have I been either a member of the Communist Party or convicted of, or, served any part of a prison term resulting from conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or violation of Title II or III of the Landrum-Griffith Act or conspiracy to commit any such crimes.

Dated Signature of Member.

Printed forms of the certificate shall be made available to nominees. Where a nominee cannot truthfully execute such a certificate, but in fact is legally eligible for an office or job by reason of the restoration of civil rights originally revoked by such conviction or a favorable determination by the Board of Parole of the United States Department of Justice, he shall, in lieu of the foregoing certificate, furnish a complete signed statement of the facts of his case together with true copies of the documents supporting his statement.

The letter of nomination with the foregoing data must reach the National Headquarters not earlier than April 15 and no later than May 15 of the election year.

Notice of this opportunity for nominations shall be given to the members by April 1, which can be through the mailing of the official American Marine Engineer to the members.

Section 5. Immediately following the close of nominations on May 15 (if said date be a Saturday or Sunday, then on the Monday immediately following) the National Balloting Committee shall meet at National Headquarters. It shall determine whether the member or members have submitted their applications in due form and whether they possess the necessary qualifications. The Committee shall prepare a report listing each applicant under the position he is seeking. Each applicant shall be marked "qualified" or "disqualified" according to the findings of the Committee. Where an applicant has been marked "disqualified" the reason therefore must be stated in the report.

The report shall be signed by all the Committee members and be completed no later than one week after the close of nominations.

When an applicant has been disqualified by the Committee, he shall be notified immediately by telegram at the address listed by him in his letter of nomination. He shall also be sent a letter containing the reasons for such disqualification by air mail, special delivery, registered to the same mailing address. A disqualified applicant shall have the right to take an appeal to the National Executive Committee from the decision of the National Balloting Committee. The applicant must, however, forward his appeal to the National Headquarters within one week after the mailing of the notice of his disqualification to him by the National Balloting Committee. The National Headquarters shall distribute to the National Executive Committee the report of the National Balloting Committee and the appeal of the applicant. The decision of the National Executive Committee should be given as quickly as possible and such decision shall be final.

Section 6. Upon receipt of the report of the National Balloting Committee and the final disposition of any appeals from disqualified applicants, the Impartial Balloting Agency, which shall be designated by the National Execu-

tive Committee, under the supervision of the National President shall prepare the official ballot and shall mail one such ballot to each member of the National Association. All ballots shall be mailed not later than the thirtieth day following the close of nominations. The Chief Executive Officer of each District and the National office where applicable shall furnish the impartial balloting agency a list of its members who have not been expelled, suspended or dropped.

Section 7. The ballot shall be enclosed in envelope which shall have the following form printed thereon: I, ... a member in good standing of the MEBA District No. ..... desire my vote recorded as per ballot enclosed.

This envelope, with ballot enclosed, shall be enclosed in an outer envelope addressed to the National Marine Engineers' Beneficial Association, care of a Safe Deposit Vault or US Post Office Box which shall be located in the city in which headquarters of the National Association is located. All ballots returned for lack of proper address shall be returned to the same Safe Deposit Vault or US Post Office Box.

Section 8. The impartial balloting agency shall be responsible for making all arrangements for such Safe Deposit Vault or US Post Office Box. All such arrangements shall be subject to the approval of the National Executive Committee. The impartial balloting agency shall retain in its possession the keys to the locked and sealed ballot box until the official closing of the ballot.

Section 9. The National Ballot shall be officially closed ninety (90) days after the mailing of the ballots in accordance with section 6 of this Article. All ballots not received in the depository when the ballots are collected as provided herein shall be disqualified.

Section 10. At each National Convention immediately preceding an election for National office, the representatives at the Conventions shall elect a National Balloting Committee of three members from among the representatives at such Convention. No representative who is a candi-

date for National office at the forthcoming referendum election shall be eligible to be a member of the National Balloting Committee. The members of the Balloting Committee shall choose their Chairman.

Members of the Official National Balloting Committee [fol. 60a] and the impartial balloting agency shall be empowered with an order, executed by the National Association and signed by the National President and National Secretary-Treasurer and under the seal of the National Association, to proceed following the close of the balloting to the Safe Deposit Vault or US Post Office Box. Upon presenting the duly executed order to the Custodian of the Safe Deposit Vault or US Post Office Box, said Custodian shall deliver all ballots which have been cast for officers of the National Association.

Section 11. The official National Balloting Committee together with the impartial balloting agency shall then proceed to count the ballots. Candidates receiving the highest number of votes for each office shall be declared elected.

In checking all ~~ballots,~~ the Balloting Committee shall use the lists of members in good standing which shall be furnished to them by the National Secretary-Treasurer.

The Chief Executive Officer of each District shall provide the National Secretary-Treasurer, not later than five days prior to the closing of the ballot, the names of the members in good standing as of the date ten days prior to the closing of the balloting, as provided in Section 9 hereof.

Section 12. After all ballots have been counted and the results tabulated, the National Balloting Committee shall replace all ballots in the boxes or other receptacles. The Chairman of the Committee shall lock and seal the ballot boxes or other receptacles.

Section 13. The balloting Committee and the impartial balloting agency shall prepare and mail within twenty-four hours following completion of the count a notarized report signed by the members of the Committee and the Representative in charge of the impartial balloting agency which shall tabulate the following information:

1. The total number of valid, void and blank ballots cast;

2. The number of votes cast for each Candidate who shall have been nominated in accordance with the provisions of this Constitution;

3. The votes cast by members of each District for each Candidate.

Such report shall be sent to each District to the National office and to each of the candidates.

The ballot box and its contents shall then remain in the custody of the National Balloting Committee for thirty days. After the expiration of thirty days if no recount is demanded by any of the candidates, the ballot box and its contents shall be turned over to the National Secretary-Treasurer who shall preserve the same for one year when it may be destroyed.

Section 14. If any candidate demands a recount of the ballots before the expiration of the thirty day period, the National Executive Committee shall be empowered to make necessary arrangements for a recount and report the result to all Districts of the National Association.

Section 15—The elected officers of the National Association shall be installed in their respective offices by any member of the National Executive Committee after the expiration of the thirty day period during which a demand for a recount may be made and shall assume the duties of their offices immediately thereafter.

Section 16. The regularly appointed members of the National Balloting Committee shall have their expenses, including transportation expense to the National headquarters, paid by the National Association as contracted by the National President.

Section 17. The impartial balloting agency shall stand ready at all times to mail out duplicate ballots to individuals —and the ballots shall be so marked, who shall notify them through their respective Districts that they have not received ballots. It shall be the duty of the Districts to forward corrected addresses to the impartial balloting agency and adequate precautions shall be taken at the tabulation

to prevent the counting of more than one ballot for each member.

Section 18. All referendums emanating from the National Office, the National Executive Committee, or the Convention shall be handled by the impartial balloting agency under the direction of the National Executive Committee and in conformity with this Constitution or the instructions of the National Convention.

Any referendum vote of the membership shall be effective as soon as it is passed, and cannot be eliminated, reversed, over-ruled, or amended unless such shall be done by another referendum vote. Neither the National Executive Committee nor the Convention shall have the authority to alter in any way any action taken as a result of a referendum vote of the membership.

Section 19. Any changes in the national election procedures consistent with the rules and regulations of the impartial balloting agency and approved by the National Executive Committee are hereby authorized.

Section 20. Neither the National Office, a District nor any branch thereof, shall have or retain as an employee or agent any person who is not a member of the M.E.B.A. and who is a relative, wife or blood relative of any elected or appointed official of that District or National Office. This provision shall be effective August 19, 1952 and shall apply to only those Districts having over 100 members.

ARTICLE VI

Duties of National Officers

Section 1. National President

(a) The National President shall be the chief executive officer of the National Association and shall devote his entire time to the work and interests of the National Association. He shall, subject to the authority of the National Executive Committee and the National Administrative Committee, direct manage, and supervise the affairs of the National Association between National Conventions and between sessions of the National Executive Committee. He

shall preside at all National Conventions and meetings of the National Executive Committee.

(b) The National President shall furnish a fidelity bond at the expense of the National Association, which bond shall be executed by a reliable Surety Company and be in the minimum amount of $20,000.00, or such higher figure as may be prescribed by the National Executive Committee. The fact that this bond has been executed and is on deposit in the National Office shall be certified to by the certified public accountant in his annual report. Said bond, as to amount and content, must, however, fulfill the requirements of any applicable law.

(c) The National President shall receive a salary of $17,887.20 per annum; provided the National Executive Committee shall have the authority to make necessary adjustments, in its discretion, in accordance with changes made in the standard collective bargaining agreements. Said compensation shall be paid in semi-monthly installments effective upon being installed in office. He shall receive all legitimate expenses incurred in the performance of the duties of his office, and shall be entitled to an annual vacation to be fixed by the National Executive Committee within the framework of the prevailing collective bargaining agreements pertaining to members of the National Association covering vessels in the offshore trade.

Section 2. National Secretary-Treasurer

(a) The National Secretary-Treasurer, subject to the supervision of the National President, and the National Executive Committee, shall be charged with the responsibility of keeping the minutes of all National Executive Committee meetings and with the maintenance and protection of all records, books, papers and contracts, including financial reports, of the National Association. He shall receive, hold and keep a proper account of all monies of the National Association and pay all legitimate bills.

(b) He shall render a quarterly statement of the accounts to the National Executive Committee, which quarterly statement shall consist of an audit by an independent,

certified public accountant. Such quarterly statement shall include a report of the financial standing of each District with the National Association.

(c) He shall make an annual report to the National Convention, certified by an independent certified public accountant, indicating all receipts and disbursements made during the preceding fiscal year. The books shall be closed on April 1st of each year for the purpose of rendering said annual audited report. Such annual report shall also indicate the Districts which have neglected to render proper returns of their elections, members, dues and such general facts as to the state of the Districts as may be required.

(d) He shall issue a monthly report to the Districts giving changes of Membership that have been reported to him officially and shall receive and answer all correspondence pertaining to his office.

(e) He shall furnish a fidelity bond at the expense of the National Association, which bond shall be executed by a reliable Surety Company and shall be in the minimum amount of $20,000.00, or any greater amount as may be prescribed by the National Executive Committee. The fact that this bond has been executed and is on deposit in the National Office shall be certified to by the certified public accountant in his annual report. Said bond, as to amount and content must, however, fulfill the requirements of any applicable law.

(f) Subject to his responsibility to discharge his specific duties as contained herein, he shall perform such other duties as may be directed by the National Executive Committee or the National Administrative Committee.

(g) The National Secretary-Treasurer shall receive salary of $14,412.24 per annum; provided the National Executive Committee shall have the authority to make necessary adjustments, in its discretion in accordance with changes made in the standard collective bargaining agreements. Said compensation shall be paid in semi-monthly installments effective upon being installed in office. He shall receive all legitimate expenses incurred in the per-

formance of the duties of his office and shall be entitled to an annual vacation to be fixed by the National Executive Committee within the framework of the prevailing collective bargaining agreements pertaining to members of the National Association covering vessels in the offshore trade.

(h) The National Secretary-Treasurer shall serve as a member of the National Executive Committee with a full voice and vote.

(i) The National Secretary-Treasurer, in the absence of the National President, shall preside at the National Conventions or at any meeting of the National Executive Committee or National Administrative Committee.

Section 3. National Vice-Presidents

(a) It shall be the duty of the National Executive Vice-Presidents to assist the President in the discharge of his duties and to discharge all other legitimate duties when ordered by the National Convention, National President or National Executive Committee. The National Executive Vice-Presidents shall receive no salary but shall be reimbursed for legitimate expenses incurred in performance of their duties.

(b) In the case of a vacancy in the office of an Executive Vice-President for any reason whatsoever, including the discontinuance of any incumbent Executive Vice-President as a full time paid elected official of a District, said office shall be filled for the unexpired term by the National Executive Committee.

Section 4. Signatures on Checks

All checks issued by the National Secretary-Treasurer on the funds of the National Association shall bear the signature of the National President and shall be counter-signed by the National Secretary-Treasurer; and, in the absence of either, the second signature may be that of any member of the National Executive Committee authorized by the National Executive Committee to counter-sign checks.

Section 5. Organizing Department

(a) There shall be established, in the National Office, the Organizing Department.

(b) Such Department shall be under the direct supervision of the National Office and the National Executive Committee. It shall be the primary responsibility of this Department and its assigned personnel to organize the unorganized eligible for membership in the National Association and to perform such other duties as may be directed by the National Office and the National Executive Committee.

(c) Such Department shall be adequately staffed with organizers to perform the organizing programs approved by the National Executive Committee or the National Convention. The employment of individual organizers shall be subject to the prior approval of the National Executive Committee.

Section 6. Welfare, Pension, and Vacation Plans

(a) It shall be the responsibility of the National Office to keep fully apprised of the operation and administration of the several Welfare, Pension, and Vacation Plans covering the membership of the organization.

(b) It shall be the national policy of the National Association:

(1) To assure full and equal rights among the membership within such Welfare, Pension and Vacation Plans, and

(2) Wherever it may be practical to do so, achieve the integration of similar Plans among the several districts.

Section 7. National Headquarters

(a) Headquarters of the National Association shall be New York, New York.

(b) The National Executive Committee, may, at its discretion, relocate or reassign either of the full time National officers to any location deemed to serve the best interests of the membership. All legitimate expenses incurred by either

of the full time National officers while away from the city where assigned in the performance of the duties of his office shall be paid.

Section 8. Matters of National Policy

Full and effective enforcement of collective bargaining agreements executed by the National Association or a District and of Shipping Rules duly promulgated by any District in accordance with the provisions of this Constitution, shall be deemed to be a matter of national policy.

Section 9. Rights of Succession to Offices of National President and National Secretary-Treasurer

In the case of a vacancy in the office of the National President, for any reason whatsoever, including death, resignation, or removal, the incumbent National Secretary-Treasurer shall assume said office of the National President for the unexpired term.

In such event and in the case of a vacancy in the office of the National Secretary-Treasurer for any other reason including death, resignation or removal, the National Executive Committee shall then elect a successor who will serve in said office until the regular National Convention which shall elect a successor for the unexpired term. Any such successor must meet the qualifications for said office.

Section 10. National Administrative Committee. The National Administrative Committee, subject to the authority of the National Executive Committee shall be responsible for the performance of the duties vested in the National office by the National Constitution and those assigned from time to time by the National Executive Committee. The National Administrative Committee may assign to any of its members specific tasks incident to the performance of any of its duties.

ARTICLE VII

National Executive Committee

Section 1. Election of National Executive Committee. The National Convention shall elect a National Executive

Committee of ten (10) members and three (3) alternates who must be full time paid elected officials of a District. Four of such members and two alternates shall be from the Atlantic and Gulf area, three of such members and one alternate shall be from the Great Lakes and Rivers area, and three of such members and one alternate shall be from the Pacific Coast area. Each such member shall hold office only so long as he continues to be a full time paid elected official of the District. Any vacancy which may occur in [fol. 60b] the office of a National Executive Committee member for any reason whatsoever between National Conventions shall be filled by the duly elected alternate from the appropriate area. Any subsequent vacancy for which there is no alternate shall be filled by the remaining members of the National Executive Committee providing that the basic allocation among the three areas shall be preserved and the new members as designated shall be otherwise qualified as above provided.

Section 2. Duties of National Executive Committee. The National Executive Committee shall enforce this Constitution and Carry out the instructions of the Conventions, and between Conventions shall have the power to direct the policy and business of the National Association. They shall direct the National officers in the performance of their respective duties. They shall also consider and take appropriate action on any appeals made by any District or any member from any action of a District or the National office. Its decision may be appealed to the following National Convention, but it shall be deemed final pending the appeal and shall remain in effect unless reversed by the National Convention.

Meetings of the National Executive Committee shall be held not less than once every four months at a place designated by the previous meetings of the National Executive Committee. The date of such meeting shall be at the discretion of the National office. Meetings may be held at other times subject to the call of the National office or by petition of five (5) Executive Committee members. Such emergency meetings if called shall be at a place designated

by the National office. All meetings of the National Executive Committee shall be presided over by the National President. The National Secretary-Treasurer shall serve as a member, ex officio, of the National Executive Committee with a full voice and vote.

Section 3. Voting Power in National Executive Committee. Each member of the National Executive Committee shall have one vote.

With respect to any reference contained in this Constitution to a minimum required vote of the members of the National Executive Committee, it shall be understood that such required percentage vote shall be based upon the number of members of the National Executive Committee who actually vote on the specific question. Members of the National Executive Committee who may not be present or refrain from voting shall not be included in the computation for the purpose of determining whether the minimum required percentage vote has been obtained.

Section 4. Quorums. A quorum shall consist of not less than 5 members.

Section 5. Expenses. All expenses incurred in connection with the functioning of the National Executive Committee shall be paid by the National Association.

ARTICLE VIII

Districts

Section 1. There is hereby established within the National Association:

(a) District No. 1: To take the place of and be substituted for and have the same territorial jurisdiction as previously covered by Subordinate Associations No. 59, 33, 13, 5, 11, 15, 16, 10, 14, 12, 40, and 99, but shall not include the territorial jurisdiction of District No. 96.

(b) District No. 2: To take the place of and be substituted for and have the same territorial jurisdiction as previously covered by Subordinate Associations No. 6, 18, 25, 30 and 101.

(c) Pacific Coast District: To take the place of and be substituted for and have the same territorial jurisdiction as previously covered by Subordinate Associations No. 38, 41, 79, 97 and 100.

Section 2. Charters to each of said Districts shall be issued when application is made therefor to the National Association by the Chief Executive Officer of said District. When a charter is so issued, then the charters previously issued to the Subordinate Associations within said District shall be terminated, forfeited and dissolved and deemed fully surrendered.

Section 3. The members of each of the Subordinate Associations within the District shall become members of the District with full rights and privileges of membership.

Section 4. Each District shall possess and exercise all the powers and duties of the previously chartered Subordinate Associations within the District conferred by this Constitution.

Section 5. Each District shall have the authority to promulgate and amend from time to time its Bylaws and Shipping Rules subject to the approval of the National Executive Committee for the administration of its affairs and activities. Such Bylaws shall set forth the specific offices which shall be filled by election on a District-wide basis, the manner in which said elections shall be conducted and the respective duties of such offices.

Section 6. Each District shall be governed by a District Executive Committee which shall be composed of the District-wide elected officials as provided in Section 5; provided, however, that pending the initial District-wide election, the membership of the District Executive Committee shall consist of previously elected full-time paid officials of the Subordinate Associations within the District and any National Officer if so desired by the District, the number and voting power of said members of the District Executive Committee to be provided for in the Bylaws of the District and the District Executive Committee shall have the power to designate its officers and to assign their duties.

Section 7. All full-time and paid officials of the Subordinate Associations within the Districts elected in the 1960 local elections shall become officials of the District for the term of their office. The Bylaws of the District may provide that the District Executive Committee may assign any of said officials to such duties as it may determine for the efficient and effective administration of the affairs of the District.

Section 8. Within each District one port shall be designated as the District headquarters. The District shall have the power to determine, in its discretion, in what other ports within its jurisdiction, it desires to maintain offices which shall be known as Branches.

Section 9. The property, assets, funds and liabilities of each Subordinate Association (including any group life policy or death benefit program) within each District shall not be affected in any manner whatsoever by virtue of the formation and chartering of the separate District. The membership of each such previously chartered Subordinate Association shall determine by a referendum vote among its own members, fixed as of the date of the formation of the applicable District, as to the disposition of the property, assets and funds (including any group life policy or death benefit program) of said Subordinate Association.

Section 10. Each District shall, in addition to such other powers and duties which it may exercise under and pursuant to the Constitution, have the authority to work out uniform policies in the matter of contract enforcement, to negotiate and consummate, enforce and administer all collective bargaining agreements covering the District or any portion thereof, to nominate the Union Trustees for any Pension, Welfare or Vacation Plan established under and pursuant to any such collective bargaining agreement and to determine the policies for the guidance of the Union Trustees. All collective bargaining agreements held by any Subordinate Association within a District shall be transferred to the District.

Section 11. With the formation of the District, all dues, initiation fees and other indebtedness due and owing from its members shall be paid to the District.

ARTICLE IX

National Conventions

Section 1. Time and Place. The regular Convention of the National Association shall be held on the third Monday in March of each year. The National Executive Committee at its regular meeting preceding the date of the Convention shall determine the place of the Convention.

Section 2. Duties. The National Convention shall be the governing body of this National Association and shall have the power, subject to Section 8 of this Article, to amend or repeal any Article or Section of this Constitution.

Section 3. Representation. The duly elected representative, or representatives for the National Convention, of each District, which is in good standing as of the opening date of the National Convention, shall be entitled to one vote for the first 50 members or less, one vote for the next 150 members or less, and one vote for each additional 100 members or less. A representative of a District, which sends only one representative, shall cast the entire vote of the Districts, which send more than one representative to the National Convention may empower one representative to cast the entire vote of the District or divide the votes equally among its Representatives.

Section 4. Eligibility of Representatives. All members eligible for election to office in the District shall be eligible for election as representatives to a National Convention. Qualified representatives to any Convention must be elected in same manner as prescribed in the Constitution and By-laws of their Districts. Failure to qualify under the above conditions shall be sufficient reason for denial of such member to be seated at any National Convention.

Section 5. Quorum. Two-thirds of the representatives present at a National Convention shall constitute a quorum.

Section 6. Visitors. All members in good standing shall be entitled to seats at a National Convention as visitors, but shall have no vote nor voice in the proceedings.

Section 7. All proceedings of Conventions of the National Association and all documents relative thereto shall be published annually in an unabridged form, when so ordered, by the National Convention.

Section 8. Amendments to this Constitution and Referendums.

(a) This constitution may be amended by a two-thirds vote in any Convention of the National Association. Proposed amendments must be submitted by resolution in accordance with the rules governing the proceedings of the Convention.

(b) Resolutions properly submitted to a National Convention, which propose amendments to the National Constitution may specify therein that the subject matter shall be submitted to a referendum vote among the members. In such case, if the resolution is approved by a sixty percent vote at the National Convention, it shall be submitted to a referendum vote and if approved by 60% of the members voting shall go into effect.

(c) A referendum among the membership on any matter which does not amend this Constitution may be authorized by a majority vote at a National Convention or a majority vote of the National Executive Committee. The matter submitted shall go into effect if approved by a majority vote of the members voting.

(d) Any amendment to the National Convention adopted by a referendum among the membership subsequent to the May, 1959 National Convention may not be deleted, altered or amended in any way whatsoever other than through another referendum vote authorized and conducted in accordance with the foregoing provisions.

Section 9. Rules of Order

RULE 1. The President will state plainly every question coming before the National Association, and before putting

it to vote, shall ask, "Are you ready for the question?" and should no delegate rise to speak on the question, the Chair shall rise and take the vote, and after he has risen no member shall be allowed to speak on it unless by consent of the President, who shall announce his decision on all votes and on all subjects. His decision on questions of order shall be without debate, unless entertaining doubts upon the point, when his decision may be appealed to the Representatives of the Convention and decided by a two-thirds vote.

RULE 2. When a Representative speaks, he shall rise and address the President, confining himself strictly to the merits of the question at issue. He shall not be interrupted while speaking, except to explain, without permission of the Representative present. When two or more Representatives arise at once, the presiding officer shall decide who is entitled to the floor.

RULE 3. All resolutions shall be presented in writing to the National Office ten days prior to the convening of the Convention. Each Resolution shall bear the Seal of the Subordinate Association, or District as the case may be. Additional Resolutions may be presented at the Convention if permitted by a ⅔ vote of the Representatives. A copy of each Resolution shall be available for the members of the appropriate Committee at its initial meeting.

RULE 4. A motion to reconsider any former resolution or vote can only be made and seconded by Representatives who vote in the majority. All motions and resolutions relating to a reconsideration of any subject must be made by giving notice when said reconsideration shall take place.

RULE 5. No business shall be taken up, except in the order prescribed, unless upon motion that the regular order of business be suspended for the transaction of the business set forth, and such motion shall be sanctioned by a majority vote.

RULE 6. All National Officers and Representatives shall keep their respective seats during the continuance of the meeting, except by the permission of the President.

RULE 7. No National Officer or representative to the Convention shall read any report that takes more than thirty

minutes in the reading thereof except with the approval of the Convention.

All reports of National Officers and representatives to the Convention must be printed or mimeographed, and if their oral reading will take more than thirty (30) minutes they shall be referred to the Committee on Distribution.

RULE 8. Robert's Rules of Order shall govern the Conventions of this National Association, unless otherwise provided.

RULE 9. The National President is authorized to levy fines against disorderly representatives during the sessions of the National Conventions.

Section 10. Order of Business

During the Executive Session there shall be an open Bible on the altar.

1. Calling the National Association to order.
2. Appointing Committees on Credentials.
3. Report of Committee on Credentials.
4. Appointing officers to fill vacancies and for the Session.
5. Opening the National Association in ritualistic form.
6. Motion or resolution covering Session and proceedings, address of welcoming, etc.
7. Appointing of Standing Special Committees.
8. Report of National Officers.
9. Reports of Subordinate Associations, or Districts as the case may be.
10. Roll call for the introduction of new business.
11. Reports of Committees in order named.
12. Report of Special Committees.

(Final Closing).

Section 11. Appointed Committees. The appointed Committees of this National Association shall be as follows:

Committee on credentials, which shall be appointed by the National Administrative Committee. It shall be the duty of the Credentials Committee to examine the credentials of all representatives.

On Auditing, which shall audit the books and accounts of the National Office and examine into the reports upon all matters of finance of this National Association referred to it by the same and shall analyze and report upon the expense account of each National officer.

On Constitution, to which shall be referred all resolutions which contain proposed amendments to the Constitution.

On Charters, to which shall be referred for investigation all applications or propositions for the issuance or revoca- [fol. 60c] tion of charters submitted to it by the National Convention.

On Distribution, to which shall be referred the Annual Report of the President and such other papers or reports as the National Convention shall direct; and it shall be their duty to analyze the same and distribute all recommendations and suggestions in such papers or reports to the Committee or other departments or officials of the National Association to which they may belong.

On Good of the Order.

On Grievances, which shall examine and report on all matters of grievances or appeals referred to it by the National Convention.

On Legislation, to which shall be referred all resolutions regarding proposed legislation.

On Dues and Revenues.

On Resolutions.

On Secret Work.

(a) These Committees shall consist of five members each. All Committees shall be selected in the same manner as the Credentials Committee subject to the approval of the Convention.

(b) When deemed necessary by the Convention, Special Committees may be appointed under the above provisions.

Section 12. Any reference contained in the Constitution to any minimum required vote of the delegates to a National Convention it shall be understood that such required percentage vote shall be based upon the per capita vote of the number of Delegates who actually vote on the specific question. The Delegates to the National Convention who may not be present or refrain from voting shall not be included in the computation for the purpose of determining whether the minimum required percentage vote has been obtained.

Section 13. Special Conventions. The National Executive Committee may in its discretion whenever it shall deem it necessary in the interest of the organization convene a Special National Convention. Any such Special National Convention shall have all of the powers of any regular National Convention and be governed by the rules and regulations applicable to regular National Conventions except as modified or altered by the National Executive Committee in its call for the Special National Convention. The Representatives to such Special National Convention shall have the same voting power as the Representatives from the same District, had in the immediately preceding regular National Convention.

ARTICLE X

Districts and Subordinate Associations

Section 1. Eligibility for Charter. Any fifteen or more persons eligible for membership in the National Association may constitute a District on receipt of a Charter from the National Association in the manner herein set forth if they have either (a) regularly and honorably severed their membership in any District as or (b) have never been a member of the National Association or any District.

Section 2. Application for Charter. Applications for Charter shall be made to the National Office and must be accompanied by a fee of fifty dollars.

Section 3. Issuance of Charter. In the case of any application received between Conventions the National Presi-

dent shall refer the application to the National Executive Committee. The National Executive Committee may approve or disapprove the issuance of the Charter by the National office, subject to confirmation by the next National Convention. In the case of any application received while the National Convention is in session, the same shall be referred directly to the Convention, which may deny the application or order the National President to issue the Charter.

Section 4. Suspension and Revocation of Charters.

(a) The charter of a District may be suspended or revoked as hereinafter provided, when said District fails or refuses to conform to the National Constitution or to National Policy of the National Association, or ceases to function as a legitimate District.

And an Administrator may be appointed, as provided in paragraph (k) hereof for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of the Districts and of the National organization.

(b) Suspension or revocation of a charter may be accomplished only after charges have been filed in the following manner: Charges may be filed by a National full time elective officer or any three members of the National Executive Committee. Such charges shall be filed with the National office which shall within thirty days of its receipt mail a copy to each member of the National Executive Committee and to the District so charged. The District shall file a written answer to the charges no later than thirty days following the mailing of the charges by the National office.

(c) Upon the filing of the aforesaid charges, the National office shall designate a Trial Committee consisting of three members who must be full time, paid elected officials of a District, one of whom shall be from a District different from the other two members. Said Trial Committee shall conduct a hearing at a place and time which it shall designate; provided, however, that the date of the hearing may

not be set earlier than 40 days following the mailing of the charges by the National office.

(d) A written record of the hearing shall be made. There shall be full opportunity for examination and cross-examination of all witnesses. The District may be represented by counsel if permission is granted by the Trial Committee.

The Trial Committee shall have full authority to determine the rules of procedure which shall govern all parties.

The Trial Committee shall have full authority to direct the District to produce or make available to the Trial Committee, or its designated agent any books, records or other documents in the possession or under the direction or control of the District and to direct any officer or agent or member of the District to appear for examination.

(e) After a full hearing, the Trial Committee shall render a written decision which shall be filed with the National office which shall distribute copies of the same to the charged District, the parties who filed the charges and to each member of the National Executive Committee. Said decision shall either recommend a dismissal of the charges in whole or in part, or a suspension or revocation of the charter or such other course of action which it deems necessary to obtain compliance with the National Constitution or National Policy.

The full record of the proceeding shall be deposited at the National office of the National Association.

(f) In the event either the District, which has been charged, or the charging parties, desire to appeal to the National Executive Committee, notice of the same together with a memorandum setting forth the exceptions taken and brief comment thereon shall be filed with the National office within twenty days from the mailing by the National office of the Trial Committee's decision.

If no such appeal is taken within the prescribed time, the decision of the Trial Committee, if it is based on a majority vote, shall be deemed to be final.

(g) The National Executive Committee, on the basis of the entire record, shall render its decision in the event an appeal has been taken. Such decision may call for a dis-

missal of the charges in whole or in part, for the suspension and/or revocation of the charter and/or for such other course of action which may be necessary to obtain compliance with the National Constitution or National Policy. A copy of such decision shall be forwarded to the District and to the charging parties.

Any member of the National Executive Committee or any National elected officer who may have filed the charges, may attend any meeting of the National Executive Committee at which time the matter is under consideration, but he shall not participate in the discussion or in the vote taken thereon; provided, however, that the National President, though he may have filed the charges, shall nevertheless preside over any meeting of the National Executive Committee considering the matter but be subject to the above indicated restrictions.

The decision of the National Executive Committee shall be final until amended or reversed by the National Convention.

(h) An appeal may be taken by either the District or the charging parties from the action of the National Executive Committee to the next regular convention or to a panel of three public persons who shall be designated by the National Executive Committee. The person taking the appeal shall when requesting the appeal indicate which alternative is desired. Notice of such appeal must be filed with the National office no later than thirty days from the mailing of the decision of the National Executive Committee and all briefs in support of the appeal must be submitted simultaneously with the filing of the notices of appeal. The decision of the National Convention or the National Panel, as the case may be, shall be final and conclusive. The National Convention and the National Panel shall have the authority to determine their respective procedures applicable to such appeals.

(i) A suspension of a charter shall require, in the case of the National Executive Committee, a two-thirds vote and, in the case of the National Convention, a majority vote of the delegates.

A revocation of a charter can occur only through a two-thirds vote of the delegates at a National Convention; provided, however, that when one of the charges against the District is a violation of Article XIV, Section 2 of the National Constitution, the charter may be revoked by a two-thirds vote of the National Executive Committee.

(j) Whenever charges are duly filed hereunder against a District, the National Association, or National Executive Committee shall have the authority, if in their determination it shall be necessary to do so in the interest of the National Association and the members of the District, pending the decision of the National Executive Committee, to suspend the charter of the District, and to designate an Administrator who shall have the same powers and duties as provided in Paragraph (k) below.

(k) In the event the charter of a District, is suspended or revoked, as provided in this National Constitution, the seal, property, assets and all books and documents of the District shall be turned over to an Administrator appointed by the National Executive Committee or the National Convention, as the case may be, to be held and administered for the benefit of the members of the District.

Section 5. Funds and Property of Districts. All money, property and other assets and interest acquired by a District, shall be held by such District, in its own name and right or by the appropriate officers of such District, for its benefit, and in the event its charter is eliminated entirely because of change in structure of the National Association, or revoked for any reason whatever, such money, property and other assets and interests shall be retained by the District for the benefit of its members. Indebtedness to the National Association shall be a prior claim on the holdings of any District.

Section 6. Disbanding and Voluntary Mergers of Districts.

(a) No District shall disband, except as provided in subsection (b), as long as seven members in good standing object to such action. Notice of a proposal to disband shall be sent to every member and a reasonable opportunity be

given for expression of objection before any action is taken on such proposal. Any District disbanding shall have its funds, property and assets administered as provided in Article X, Section 4(k).

(b) Any two or more chartered Districts may merge and a new charter shall be issued to the merged organization which shall have the same territorial jurisdiction as the merged subordinate bodies. Such merger shall result when approved either by a ⅔ vote of the Representatives at a National Convention or by the majority vote of the respective membership voting of the subordinate bodies seeking to merge.

Section 7. Jurisdiction of Districts. Each District shall have exclusive jurisdiction over all members of the National Association within its territory, who shall be governed by the Laws, Rules and Regulations of such Districts.

All members of the National Association may at their option transfer their membership to any District they desire and upon such transfer shall be entitled to a refund of dues from the District transferred from, paid in advance of the quarter in which the transfer is made. The District shall use no compulsion in transfers.

The territorial jurisdiction of each District, chartered by the National Association shall be determined by drawing a half-way line between the ports named in the charters of the adjoining Districts.

The National Executive Committee shall have the authority to permit a District to accept into membership, on the basis of such Rules and Regulations as said Committee may issue from time to time, such workers who are not otherwise eligible under Article III of the National Constitution, but who are employed in the maritime or allied industries. The Rules and Regulations shall include, among other matters, provision for the rate of initiation fees, due to be paid by such members and the per capita tax to be paid by the District to the National Association with respect to such members.

Section 8. Each District, may promulgate its own Bylaws and Regulations provided, however such Bylaws and

Regulations must first be submitted to and approved by the National Executive Committee, and shall not be inconsistent or in conflict with any of the provisions of this Constitution. Regulations shall include shipping rules.

Section 9. Eligibility for Office in Districts.

Any member shall be eligible for nomination to and election as a full-time and paid elective office of a District provided he is at the time of nomination and election a member in good standing and (a) has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of closing of nominations; and (b) has been a member of the District and/or predecessor Subordinate Association for 2 years immediately preceding said date; and (c) has had either 180 days of employment on vessels covered by collective bargaining agreement with the Union during each of any 2 full calendar years of the 3 calendar years immediately preceding the closing date of nominations, or equal time served as full time and paid elected or appointed official of the National Association or of a Subordinate Association or the District or of any other organization which has duly affiliated with the National Association.

A candidate for District President, in addition to the qualification specified above, must have previously been elected and served as a full time and paid official of a Subordinate Association, District or of any other organization which has duly affiliated with the National Association.

A member may be nominated for and if elected, fill and serve simultaneously as a national elected officer and as a District elected officer but in such event, he shall be entitled to receive compensation from only one office.

No member shall, while serving in office, be receiving a pension under any MEBA Pension Plan.

No member may hold an elective or appointive office in any District who is a member of, or supports an organization which favors a totalitarian form of government or who is a member of or supports an organization which advocates the overthrow of the Government of the United States by force or violence or is disqualified by law.

Section 10. Reports to National Association. Each District, shall, on or before March 1st of each year, submit to the National Office on forms provided for the purpose a report giving a synopsis of its proceedings for the preceding calendar year, a list of its current officers and the number of members in good standing as of December 31st. Dis- [fol. 60d] tricts failing to submit their annual report by or before March 1st shall have their dues payments to the National Association determined by the last annual report submitted by each District.

Each District shall file with its annual report a financial report showing income, disbursements and financial balance for the preceding fiscal year.

The annual financial reports shall be prepared by a legitimate firm of recognized accountants, who shall prepare such reports on the basis of information obtained from the firms and banks in whose custody the assets of the individual District are placed. In the case of securities and bonds, such financial reports must indicate that the securities contained in the report have been personally viewed by the accountant submitting the financial statement.

In the event that a District fails to submit its annual financial report on or before the required date and any other reports deemed necessary under this Constitution, failure to conform to this provision shall be grounds for not being seated at any Convention, or other meetings of an official nature until such reports have been submitted.

In the event that such reports are not made available to the National Office by June 15th of each year, the National Office shall immediately obtain a Certified Public Accountant for the purpose of examining the books and assets of the delinquent District, and upon completion of said audit the accountant shall submit a detailed report to the National Office which shall forthwith make the report available to the National Executive Committee. The expense of said audit shall be borne by the National Association, subject to reimbursement by the District involved.

Any District, which fails to open its books for such audit by the National Association, shall be subject to having charges filed for the suspension of its charter, and such

suspension if decreed shall continue until all records have been made available to the certified public accountant dispatched from the National Office. In the case of Districts having 100 members or less, certified bank statements shall be acceptable in lieu of auditor's reports.

Changes in officers subsequent to the Annual Report shall be promptly reported to the National Secretary.

Section 11. The year as herein referred to shall be a calendar year beginning January 1. The first quarter as herein referred to shall commence January 1. Any District, which fails to pay its dues to the National Association for the second, third and last quarters before the last day of the preceding quarter, and for the first quarter, before the first of March together with any other amounts due the National Association on that day shall not be in good standing with the National Association until such dues and other amounts have been paid.

Section 12. All members visiting Districts shall satisfy the District, which they visit that they are in good standing. Visiting members granted such courtesy are advised that a District meeting in executive session has the inherent right to exclude anyone other than officers and members in good standing of said District during such meeting. Visiting members shall be granted voice, but no vote at membership meetings.

Section 13. Members in good standing who shall be absent from their own District and not having the password, may receive from the Chief Executive officer of a District, an order for the password, attested by the Secretary. The Chief Executive officer of a District, to whom they may present the order is authorized to invest them with the password.

Section 14. When deemed necessary any District may adopt a local password.

Section 15. When any District initiates a member for the benefit of another District such member shall be required to sign a voucher, which shall be forwarded to the

District of which he is thus made a member to be attached arrange its dues accordingly.

Section 16. Each District may, at its option, become beneficial, as the name of the National Association indicates, by paying to members when sick, or, in the case of death, to their family such sum as it shall adopt in its Bylaws, and may arrange its dues accordingly.

Section 17. Districts shall be known and designated by the Charter number only, and none of their stationery or other printed matter shall bear any name, description or title, other than "Marine Engineers' Beneficial Association" with the number of their Chapter attached thereto.

A District may have the names and titles of the appropriate officers of the District affixed to their stationery and other printed matter.

Section 18. Letters emanating from a District shall NOT be official unless bearing the seal of the District.

Section 19. When any District completely ceases to function its Charter shall be considered as forfeited and its property and assets shall be treated in the same manner as in the case of a revocation of a Charter of a District.

Section 20. Each District shall furnish the National Office with a list of ALL CHANGES IN MEMBERSHIP and the number of membership meetings held each month. This shall include the names of all initiated, together with the date of initiation, all suspended and dropped from the rolls, together with the reasons for the same, rejections, reinstatements, transfer cards granted or received, and all deaths.

Failure of any District to furnish such reports shall subject the District to a fine of fifty dollars ($50.00) per month for the first three months of such delinquency; for each following three months in which such reports are not filed such penalty shall be doubled. All fines must be paid previous to any National Convention.

Section 21. Districts shall not print or publish any mailing list of their members and shall not give any names and addresses of their members to any one except the National

Office, except for Welfare Fund or Pension Plan purposes, provided, however, that Districts may furnish other Districts with names, addresses, and other pertinent data concerning members, when an official request is made for such information under the seal of a District and provided further that every bonafide candidate for election to office in the District shall have the right, once within thirty days prior to an election for which he is a candidate, to inspect a list containing the names and last known addresses of all members of the District, who are subject to a collective bargaining agreement requiring membership therein as a condition of employment.

No District or member of the National Association, shall use the name of said District as authorizing the publication of any book, pamphlet, circular or other printed matter, containing any advertisement whatever, nor shall it authorize any person or persons to do so, unless approved by the National Executive Committee.

Section 22. All forms of the National Association, lodge regalia, badges and pins to be used by the National Association and the Districts shall have the Union Label stamped on same, and must be procured through the office of the National Office.

Section 23. Districts, when such act is deemed advisable or necessary in the enforcement of a strike, shall have the right to levy strike assessments upon their membership, by presenting such requirement in resolution form at two consecutive regular meetings. The reading of the resolution at the first meeting shall be for presentation purposes only, and no arguments for or against shall be entertained. At the second reading the subject shall be considered, argued pro and con, and if adopted by a two-thirds majority shall become effective immediately provided, however, the vote shall be by secret ballot.

Under no conditions shall any District levy any assessment for any cause whatsoever against a member of another District.

Section 24. Vessels Operating Under Unfair Conditions. When a vessel known to be operating under unfair condi-

tions sails from a port of one District for a port of another District, the District claiming jurisdiction over the port of departure shall notify the District, which claims jurisdiction over the port to which said vessel is destined, of the sailing of said vessel, also of conditions existing thereon at the time of her departure from said port.

A District failing to comply with this rule, which shall be construed as a rule of the National Association, shall be fined the sum of one hundred dollars ($100.00), which shall be paid to the National Office.

The National Executive Committee shall be the Trial Board and their findings shall be final.

ARTICLE XI

Finances

Section 1. Dues and Revenues to National Association. For each member in good standing on December 31, and for each member not more than one year in arrears as per Section 3 of Article XIII, each District, shall pay to the National Association at the beginning of each calendar quarter, such sum for each member thereof at the time of its annual return to the National Office, as may be fixed by the National Convention. No change in such sum made by any National Convention shall be effective prior to the next calendar quarter following such Convention.

Other revenue of this National Association shall be raised as follows: By sale of Charters, stationery, supplies and from the "American Marine Engineer" or any other enterprise engaged in by the National Association.

Section. 2. Per Capita Tax and Expenditures by National Association

(a) The guideposts in fixing per capita tax at National Conventions shall be:

(1) The framework established by the dues rate fixed in the National Constitution.

(2) Recognition of the respective tasks which must be performed by the Districts and the financial burdens involved.

(3) Recognition of the tasks which must be performed by the National Association and the financial burdens involved.

(4) The monthly per capita tax shall at no time exceed twenty five per cent (25%) of the monthly dues rate established in the National Constitution.

(b) When the National Convention is in session, a two-thirds affirmative vote shall be necessary for the appropriation of money. Between National Conventions, the expenditures covered by the budget approved by the National Convention are hereby authorized. In the event an emergency arises requiring the expenditure in excess of the budget approved by the National Convention, a sum not to exceed ten thousand dollars may be paid by the National Office when approved by the majority of the National Executive Committee. The ten thousand dollars limitation may be exceeded if approved by a majority vote of the Districts. Each District shall determine for itself the manner in which its decision shall be made and its vote to the National Association shall be cast on the same basis as its representation at an annual Convention.

Section 3. Revisions of Dues, Fines and Assessments by National Convention. The National Convention shall have the power by majority vote to regulate, modify and otherwise control the initiation fees, dues, fines and assessments levied by the Districts, or any of them whenever in the judgment of the Convention such action is necessary in the best interests of the National or District.

When the Convention by majority vote authorizes a change in the dues structure, or where the Convention by majority vote levies an assessment, such dues change and/or assessment, before becoming effective, must be immediately submitted to the membership in the form of a 90-day referendum ballot. If the referendum ballot, by simple majority confirms the action of the Convention, such dues change or assessments shall be considered effective upon the date provided for in the enabling resolution. If the referendum vote does not carry in favor of the Convention

action with regard to the dues change or assessment, then such dues change and assessment shall not be placed in effect.

Section 4. Assessments and Fines. Subject to the provision of Section 3 of this Article, the Districts acting in accordance with their Constitution and Bylaws shall have power to levy such assessments as may be necessary for extraordinary purposes and impose fines not to exceed one thousand ($1,000.00) dollars for violation of membership obligations.

Provided, however, that as a minimum requirement, any such assessments may be approved only (a) by majority vote in a secret ballot of the members in good standing, voting at a regular or special membership meeting, after reasonable notice of the intention to vote upon such question or (b) by majority vote of the members in good standing, voting in a membership referendum conducted by secret ballot.

No fine may be imposed unless the member has been (a) given written specific charges, (b) given a reasonable time to prepare his defense and (c) afforded a full and fair hearing.

Section 5. Initiation Fees. The initiation fee for any newly admitted member shall be $1,000.00.

The National Executive Committee shall have the authority to provide for a method of payment and lower or waive the amount of the initiation fee in accordance with the need for an organizational drive in any area.

In the event the initiation fee is increased by action taken by a District such change may be made effective only if approved (a) by majority vote by secret ballot of the members in good standing voting at a regular or special membership meeting, after reasonable notice of the intention to vote upon such question, or (b) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot.

Section 6. Membership Dues. Subject to the provisions of Section 3 of this Article, the monthly dues to be paid by the members shall be prescribed by the Constitution and

Bylaws of the respective Districts, and shall not be less than ten dollars ($10.00) per month, except where a different amount has heretofore been approved, payable quarterly in advance or by dues check-off under any collective bargaining agreement maintained by the National or Districts. Such dues shall be paid into the treasury of the District, to which the member belongs. The monthly dues of all members of Districts shall be paid not less than quarterly in advance i.e., previous to January 1 to be in good standing for the first quarter; previous to April 1 for the second quarter; previous to July 1 for the third quarter; and previous to October 1 for the last quarter of the year. Members of Districts, who pay dues by the check-off system under any collective bargaining agreement maintained by the National or Districts, shall be in good standing provided dues are checked off and received each time as provided in the collective bargaining agreement. It shall be the duty of each individual member to assume all responsibility for maintaining his membership in good standing.

The District shall issue an official receipt for all monies received from members. No member of any District shall be entitled to any benefits of the District or be considered in good standing unless his dues are paid up for the full current calendar quarter or paid in accordance with any dues check-off system under any collective bargaining agreement maintained by the National or District.

Section 7. Transfer of Dues, etc. When any official or agent of a District collects dues, assessments and other monies from members of other Districts such monies shall be deposited in the fund of the District, the official or agent of which has made the collection and such District shall be obligated to forward the amount with an itemized account to the proper District by the 10th of each month of all such monies received during the preceding calendar month.

Should a District have a grievance in this matter, the case shall be referred to the National Secretary-Treasurer in writing under the Seal of the aggrieved District. The National Secretary-Treasurer shall investigate the circum- [fol. 60e] stances and if the grievance is sustained, he shall bill the delinquent District for the amount owed plus a ten

per cent fine and declare the delinquent District in bad standing with the National Association until such amount of dues plus National fine is received by the National Secretary-Treasurer. Upon receipt of the proper amounts, the National Secretary-Treasurer shall immediately forward the amount requested in the letter of grievance to the aggrieved District and delinquent District of its return to good standing with the National Association.

ARTICLE XII

Impeachment and Removal from Office of National Officers, Including National Executive Committee Members

Section 1. Charges. Charges of misdemeanors in office, malfeasance, misfeasance, nonfeasance, corruption, favoritism, extortion, oppression in office, gross misconduct or habitual drunkenness may be filed by any one or more Districts bearing the Seal of said Districts against any National Officer, including the members of the National Executive Committee.

Section 2. Suspension from Office. The filing of charges shall not operate as a suspension from office except that the National Executive Committee may by majority vote suspend the National Officer or National Executive Committee Member against whom charges have been filed for a period not to extend beyond the final decision on such charges.

Section 3. Answer of Accused. Any charges filed as herein provided shall be submitted by the National Executive Committee to the accused individual who shall be given 30 days to prepare the defense to submit his answer to the National Executive Committee.

Section 4. Trial of Accused. A hearing shall be held before the National Executive Committee at which time the accusing Districts and the accused individual shall be given a full opportunity of submitting their respective cases. Testimony may be presented through witnesses, or documents and the parties interested shall have the benefit of counsel if they desire, provided said counsel shall be a

marine engineer and a member of a District in good standing. A written record shall be made of all testimony and documents submitted at the hearing. The National Executive Committee may dismiss the charges or by a two-thirds vote suspend or dismiss the accused from office. Failure to obtain a two-thirds vote shall be deemed to be a dismissal of the charges against the accused.

Section 5. Referendum. In the event the National Executive Committee shall by a two-thirds vote suspend or dismiss the accused, the National Executive Committee shall promptly cause the charges, answer and the record of the hearing to be submitted to the entire membership for referendum vote on the question of whether the decision of the National Executive Committee shall be sustained or reversed. A period of at least 90 days shall be allowed for the return of ballots in any such referendum. A majority of the votes cast shall determine the final decision.

Section 6. Decision. If the final decision shall be in favor of the accused, he shall be reimbursed, by the Districts, which filed the charge, for the legitimate costs incurred by him in his defense. If the final decision shall be against the accused, he shall be deemed automatically suspended or removed from his office or position in accordance with the decision of the National Executive Committee and in the case of dismissal shall be barred from holding any office, position or employment in the National Association.

Section 7. Criminal or Civil Liability Not Affected. A decision rendered in favor of or against any accused under the provisions of this Article shall not in any way affect his criminal liability or his civil liability under the law to the National Association or District.

ARTICLE XIII

Rights and Duties of Membership

Section 1. General Rights. All members are entitled to all the rights, benefits and privileges of membership set forth in this and other articles of this Constitution and in

Section 6. Transfer and Withdrawal Cards.

Members who have paid all of their indebtedness, and apply in writing at a regular meeting for a withdrawal card, may be granted same; the card shall be sufficient evidence the holder was in good standing when issued, and may be reinstated in the District, issuing withdrawal upon the payment of fifty ($50) dollars and three months' dues in advance, provided, however, that he has not worked under the authority of his license during the period of withdrawal.

The holder of a withdrawal card who wishes to reinstate shall submit a written statement setting forth his whereabouts and employment record since the date of issue of the withdrawal card. If it is ascertained that he has worked under the authority of his license during such period of withdrawal, he shall be required to pay in reinstatement fee of one thousand (1,000) dollars plus dues and assessments while working under the authority of his license, plus three months dues and assessments in advance. A member who falsifies his reinstatement application in this respect may be charged with violation of Oath of Obligation and be tried and penalized accordingly.

Every ex-member reapplying for membership from withdrawal card shall make application in writing to the District they have withdrawn from. The Chief Executive officer of a District, shall read the application to a committee of three members for investigation as to the desirability of reinstating the applicant. The inquiry shall be for the purpose of determining whether the applicant is of good moral character, possesses the required qualifications for an applicant for initial membership, and whether his activities during the period of his withdrawal have conformed to the principles and objectives of the National MEBA and to the original Oath of Obligation. Failure to meet any of said requirements shall constitute a basis for denying reinstatement. In the event any objections are raised against reinstatement, because of a failure to meet the foregoing requirements, all the provisions of the Constitution relating to the procedure for filing the charges against members,

hearings on the same and appeals shall be complied with and shall be deemed to be applicable in all respects. The Committee shall thereafter submit its findings with their recommendations to the earliest possible regular meeting of the membership, and a majority vote of the members voting at said meeting, by secret ballot, shall be necessary to approve said application for reinstatement. This provision shall apply to all members whose request for reinstatement hereunder has not been acted upon by any Subordinate Association, or District as the case may be, prior to May 20, 1957.

Any member who (a) applies for and receives a withdrawal card subsequent to the close of the 1960 National Convention, and (b) prior to the 1960 National Convention applied for and received a withdrawal card and does not, within sixty days following the mailing by his Local, or District as the case may be, to his last known address, apply for reinstatement on the basis herein above set forth, and who at any subsequent date applies for reinstatement, his application for such reinstatement shall be deemed to have the same status as an application for original membership and be handled in the same manner as provided in this Constitution for such original application.

Members who have paid all of their indebtedness, and apply in writing, at any regular meeting, for a transfer card, shall be granted the same providing dues are paid through the quarter during which such transfer is requested, providing there be no charges against them. The transfer card shall be promptly forwarded to the Chief Executive officer of a District, to which a member is being transferred by the Chief Executive officer of a District, issuing the transfer. The address and beneficiary of the member transferred shall be furnished by the Chief Executive officer of a District, issuing the transfer, as provided for on the reverse side of the transfer card.

Where the application of any member for a transfer to another District is rejected by that District, he shall retain his membership in the District, from which the transfer is issued.

the Constitution and Bylaws of the respective Districts including the right to nominate candidates, to vote in elections or referendums, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings subject to reasonable rules and regulations in the appropriate Constitution and Bylaws, to meet and assemble freely with other members, to express any views, arguments and opinions and to express, at meetings, his views upon candidates, in any election or upon any business properly before the meeting subject to the Organization's established and reasonable rules pertaining to the conduct of meetings; provided that nothing herein set forth shall be constituted to impair the right of the National Association to adopt and enforce reasonable rules as to the responsibility of every member toward the Organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations. Any member falling within Section 1 (d) of Article III shall have a voice and vote only on such questions in which he is directly affected. Other members shall not have any voice or vote on questions affecting exclusively those members covered in Article III, Section 1 (d).

Any member who becomes licensed to practice law and who does engage in such practice of the law on the basis of his license shall forthwith be obligated to obtain a withdrawal card in accordance with the provisions of the National Constitution.

Section 2. General Duties. All members are expected to do all in their power to maintain the interest, the life and usefulness of the Association. They shall comply with and observe all provisions of all outstanding collective bargaining agreements of the National Association or of any District, under which they may be employed. No member shall traduce, slander, or wilfully or maliciously injure the National Association, any District, or any member thereof in any way.

Members charged with violations of this section shall be tried by the District where the offense has been committed

in accordance with the procedures provided in its Constitution and Bylaws.

Section 3. Good Standing. Payment of Dues. No member shall be deemed in good standing unless his dues are fully paid up to and through the current quarter. Any member who shall be in arrears on his dues for a period of one year shall be dropped from membership unless otherwise ordered by the District, but in no case may such a member be retained on the membership rolls if he is in arrears for over two years' dues.

Section 4. Good Standing. Fines and Assessments. Any member who is in arrears for fines, assessments or other indebtedness to the National or District, and who does not pay same within one month, shall, before being suspended or dropped, have charges presented and tried in a manner provided in this Constitution, Appendix Article IX.

Section 5. Reinstatement. Any member of a District, who has been dropped, or expelled from membership in accordance with the provision of the Constitution, can only apply for reinstatement to the District from which he was dropped, or expelled. Any member falsifying his application in this respect shall be subject to charges, and if after a due hearing as provided in this Constitution, such fact is proven, he shall forfeit all monies paid on the falsified application and be expelled from membership and the National Office be notified of such fact. The reinstatement fee for members dropped or expelled shall be one thousand ($1,000) dollars, plus three months dues in advance and any outstanding fines. Dropped members who have worked under the authority of their license while in a dropped status shall be required to pay dues and assessments while so working, in addition to the above reinstatement fee.

Any application for reinstatement shall be deemed to have the same status as any application for original membership and shall be handled in the same manner as provided in this Constitution for such original application.

Members transferring from one District to another shall be eligible to sick and death benefits in the District, transferred from until they shall become eligible to such benefits in the District transferred to, which shall be for a period of the current quarter, during which such transfer is granted.

When a member requests a transfer and such member in conformity with the Constitution is eligible to receive same, his request for transfer shall be presented to the membership meeting immediately following receipt of his request for transfer and in the event that he does not qualify for transfer by reason of being ineligible under the provisions of the Constitution, he shall be so notified immediately with the notification setting forth the reason for his ineligibility for transfer, with a copy of same referred to the District, into which member is requesting transfer.

Any member of a disbanded District who was in good standing at the time of its dissolution, and wishing a transfer card, shall make application to the National Office within one year from the date of the disbanding with the proof that he was in good standing at the time of the disbanding, and shall receive a transfer card upon the payment of the amount necessary to have continued his dues to the date of application had his District still have existed. Any person failing to take advantage of the one-year limit must apply as a new member and pay the regular initiation fee required by the District to which they make application. This applies to all who were members of Districts whose charters have been revoked or have lapsed, each of whom is at liberty to make application for membership regardless of their former affiliations.

Members of a disbanded District holding a card from the National Office, who is unable to deposit the same within three months may become a member at large by depositing their cards with the National Office and paying in advance dues at the regular rate per annum; provided that any members at large, as provided for, must deposit their cards with a District, as soon as it becomes possible for them to do so.

ARTICLE XIV

Strikes and Contracts

Section 1. All collective bargaining agreements shall be held jointly by the District and the National Association.

Section 2. No District may call a strike unless it first obtains the approval of the National Executive Committee.

ARTICLE XV

Submission of Documents for National Executive Committee and Action by National Executive Committee and National Convention

Section 1. Submission of Documents. In the submission of all documents for the attention of the National Executive Committee two (2) copies shall be forwarded to the National Office.

Section 2. Action by National Executive Committee. The National Executive Committee may take any action which it is authorized to take under this Constitution either at a duly convened meeting or by written authorization.

Section 3. Vote by National Executive Committee and National Convention. Any reference contained in this Constitution to any minimum required vote of the delegates to a National Convention or of the members of the National Executive Committee, it shall be understood that such required percentage vote shall be based upon the number of delegates or members of the National Executive Committee, as the case may be, who actually vote on the specific question. The delegates to the National Convention or members of the National Executive Committee who may not be present or refrain from voting shall not be included in the [fol. 60f] computation for the purpose of determining whether the minimum required percentage vote has been obtained.

Minimum Requirements for the Constitution and Bylaws of a District of the National Association.

There is attached as an Appendix the minimum requirements for the Constitution and Bylaws of a District. No

provision in any Constitution or Bylaws of a District may be in conflict with any of the provisions set forth in the appendix.

APPENDIX

Constitution for Districts

ARTICLE I

Name

Section 1. This District shall be known by the name and title of Marine Engineers' Beneficial Association No. ....., A.F.L.-C.I.O., City ..... State .....

ARTICLE II

Object

Section 1. The object of this Association shall be to unite its members fraternally, to improve, maintain, promote and protect the standard of the craft, to regulate the business matters of members of the Marine Engineers' Beneficial Association within its jurisdiction, pertaining to affairs of the Association, and when it may determine, to render succor to its needy, sick and distressed members and to bury its dead. This Association acknowledges the jurisdiction of the National Marine Engineers' Beneficial Association, AFL-CIO, of the United States of America.

Section 2. This Association shall be the exclusive representative for each and all its members for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and for negotiation and execution of contracts requiring members to continue membership in the Association as a condition of employment and contracts requiring the employer to deduct, collect or assist in collecting from the members' wages, any dues, fees, assessments, fines, or other contributions payable to the Association.

This Association is irrevocably authorized and empowered exclusively to appear and act for each and all of its members and on their behalf before any Board, Court, Com-

mittee or other tribunal in any matter affecting his or their status, as employees, or as members of the Association, and exclusively to act as agent of all members and bind each and all of them in the presentation, prosecution, adjustment of any kind of character arising out of the employer-employee relationship as fully and to all intents and purposes as the member might or could do if personally present, said power to include but not to be limited to the prosecution, adjustment and settlement of grievances, complaints or disputes arising under any collective bargaining agreement to which the Association is a party.

Section 3. All members of the National Marine Engineers' Beneficial Association shall receive from all Districts equal shipping rights in all ports, the right to pay dues in any District for transmittal to the respective District of which he is a member and the right to full aid and cooperation from the officers of all Districts in the settlement of any and all disputes under our contracts, and such other aid and cooperation as might be necessary and reasonable; provided however, that all members shall recognize the jurisdictional requirements as per Section 7 of Article X captioned "Districts."

Districts collecting funds for members of other Districts shall deposit the same in their own funds and then remit the amount collected to the Districts to which the paying member belongs. Such funds shall be remitted to the proper District no later than thirty days after collection. Failure to remit funds collected to the paying members' District within the time specified shall constitute a flagrant violation of this Constitution, and shall subject the local official of the non-remitting District having the responsibility to make such remittances to charges of non-feasance and misfeasance in office.

ARTICLE III

Composition

Section 1. (MEMBERSHIP OF DISTRICTS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE III, NATIONAL CONSTITUTION.)

ARTICLE IV

Membership

Section 1. Any person duly qualified as prescribed in Article III may become a member of this Association upon payment of the required initiation or reinstatement fee and penalties, if any, and three months' dues in advance to being on date of signing application, into the treasury of the District and being duly elected according to the provisions of this Constitution and the Bylaws of the District.

Section 2. No District shall act upon a petition of any applicant for initiation whose residence may be nearer some other District under this jurisdiction without the consent of such District.

Section 3. Propositions for membership should be made one week before being balloted for. However, candidates may be proposed, elected and initiated at any one meeting.

Section 4. Candidates for membership should be proposed by one member and seconded by another who can speak knowingly of their character and proper qualifications for admission. The proposal shall then be referred to an Investigating Committee, who shall report as to their qualifications for membership.

Section 5. Previous to the ballot being cast for membership, the Chief Executive officer of a District, shall request the members to state whatever knowledge they have of the candidate's character and qualifications, and whether there is any serious objection to their becoming members. An Application may be withdrawn with the unanimous consent of the members present before the Investigating Committee has reported but not afterwards.

Section 6. After the report of the Committee the ballot must be spread whether the report be favorable or unfavorable. It is the ballot, and not the report of the Committee, which elects or rejects a candidate.

Section 7. When the candidates are balloted for, a majority for or against, of the total vote cast, shall determine

their election or rejection. If any candidate is rejected he cannot be balloted for again until two months have elapsed, and he is not eligible for membership in any other District of the Marine Engineers' Beneficial Association without the consent of the District where rejected. Provided, however, that when any engineer has made regular application to a District and been rejected, he shall have the right of appeal to the National Executive Committee, and, in the event of their finding that the rejection was due to unfair dealings, they shall permit the applicant to apply for membership in the District next nearest to his place of residence or employment.

Section 8. Candidates shall pay with their application such sum of money as the Bylaws shall specify, and in case they are rejected the fee shall be returned. If a candidate is rejected, all other Districts shall be notified of the rejection through the National Office.

Where a candidate is permitted to deposit less than the full amount required for admission into membership with the obligation to complete payment thereafter, and he is subsequently denied admission by the organization for any reason whatever, the payments he has made toward his initiation fee shall be returned to him. In the event, however, he fails to complete payment on his initiation fee within one year, the payments made by him shall be forfeited and he shall be deemed ineligible for admission into membership.

This provision shall apply to cases of application for reinstatement by members who have previously been dropped or expelled and application for reinstatement on the basis of withdrawal cards which under the National Constitution are to be handled in the same manner as original applications for membership.

Section 9. Members at the time of initiation shall subscribe their names to the Constitution and Bylaws and shall give their age, place of residence, class of license, and other information required, to the appropriate officer, to be entered in a book kept for that purpose. After initiation they

shall be handed a printed copy of the Constitution and Bylaws, and shall acquaint themselves of their duties to the National Association, District, and fellow members.

Section 10. No person shall be a member of more than one District at the same time, and a person who has been a member of a District cannot again be admitted a member of any other District under this jurisdiction without first producing a regular withdrawal card from such District with a certificate of his good standing, and that all his indebtedness has been paid, except as provided for in case of disbanded Districts.

Section 11. Members of the Marine Engineers' Beneficial Association shall not be permitted to accept a position upon any vessel until they have reported to and cleared from the District having jurisdiction over the port where such vacancy occurs.

Section 12. Any elected candidate eligible for membership, unable to appear at a regular meeting for initiation, may, on written request, be obligated by the officer so authorized by the District in which his application has been approved. Ceremonies thus conferred shall be reported in writing at the next regular meeting of the District signed by the officer conferring the obligation and the candidate and if approved by the District the candidate shall be declared a member and his name placed on the roster.

Section 13. Districts may provide for associate or contributing members, to be elected from citizens who desire to aid in our objects.

Section 14. Districts have the right to suspend or drop from membership chronic drunks or chronic performers who are inimical to the best interests of the membership. Whenever two members of the District prefer charges against a member for either of these offenses and the member has ample opportunity to appear before a membership meeting, the membership may by a three-fourths (¾) majority vote of the members voting, impose either of the above penalties or any other legal penalty. If any member

refuses to appear after notice has been given, the membership may proceed ex parte in his absence.

The specific charges must be written and the accused must be given a reasonable time to prepare his defense and afforded a full and fair hearing.

Section 15. In case of suspension or reinstatement of a member, two-thirds of the votes of the members present shall be required.

ARTICLE V

Election of Officers and Appointive Offices

Section 1. The tabulating of the ballots for the election of officers shall be held at any regular meeting in December, or at the first regular meeting in January of the election year. Such meeting shall be designated by each District and shall be printed in its Bylaws. Only members who are in good standing shall be entitled to have their ballots tabulated for the election of officers. Elections shall be held at regular three (3) year intervals, provided that this subdivision shall start with the 1960 Elections. Such elections shall be held by referendum and all balloting shall be done by use of a secret ballot. All ballots shall be returned to a bank, vault or post office box as designated in the Bylaws of the individual District and held there until the time designated by the District Bylaws for the counting of such ballot. A reasonable notice shall be given as to the time for nominations for a candidate for each election.

Any District desiring outside supervision of any election of its local officers shall request the National Organization, and the National Executive Committee shall have the authority, when so requested, to perfect arrangements for the supervision of the election of Local Officers of such District.

Section 2. Should the election or installation night fall on any legal holiday, the District may name any night succeeding the regular night on which the election installation will be in order.

Section 3. The Bylaws of a District shall provide for the manner of filling vacancies in any elective office.

Section 4. The Bylaws of a District shall provide for the elective offices and appointive offices and committees.

ARTICLE VI

Duties of Officers

The Bylaws of a District shall provide for the duties and responsibilities of each of the elected officials and provide for the necessary bonding of the appropriate officials as required by law.

ARTICLE VII

Duties of Members

Section 1. Members of Districts shall hold themselves in duty bound to recognize every other member in good standing and shall not traduce or slander their character or wilfully or maliciously injure them in any way on penalty of being suspended or dropped from the District. Members are expected to do all in their power to maintain the interest, the life and the usefulness of the District. They shall comply with and observe all provisions of all outstanding collective bargaining agreements of the National Association or of any District under which they may be employed.

Section 2. Members about to leave their position shall report the same to the District, which shall furnish, if possible, a competent member to fill the vacancy. Any member in want of a position shall report the same to the District.

Section 3. Members shall not hire or sail with engineers who are not members of the Marine Engineers' Beneficial Association or with members who cannot produce a receipt showing them to be in good standing in the National Association. However, on vessels not covered by agreement, permission may be granted by the District having jurisdiction over the port to sail with non-members.

Section 4. No member of the Marine Engineers' Beneficial Association shall succeed another member in any employment without first learning the causes leading to the change.

Section 5. Members losing their positions, the reasons for which are unknown and being supplanted by another member, without due inquiry being made, may make complaint to and be given a hearing by the officers of any District, in an emergency, by the Chief Executive officer of a District, and two members in good standing.

Section 6. No member of the Marine Engineers' Beneficial Association shall be permitted to sign an application for an original license as a marine engineer unless applicants can produce proof that they have made application for membership in the Marine Engineers' Beneficial Association.

ARTICLE VIII

Impeachment and Removal from Office of Elected Officers of Districts

Section 1. Charges and Answer. Charges of misdemeanors in office, malfeasance, misfeasance, nonfeasance, corruption, favoritism, extortion, oppression in office, gross misconduct, habitual drunkenness, or failure to conform to the National Constitution or to National Policy may be filed by a National full-time elected officer or any three members of the National Executive Committee or by a 10% vote of the members in good standing of said District against any elected officer of the District. Such charges shall be filed with the National office which shall within 30 days of its receipt mail a copy to each member of the National Executive Committee and to the officer so charged. The officer charged shall file a written answer to the charges no later than 30 days following the mailing of the charges by the President.

Section 2. Trial. Upon the filing of the aforesaid charges, the National office shall designate a Trial Committee consisting of three members who must be full-time and paid

elected officials of a District, one of whom shall be from a District different from the other two members. Said Trial Committee shall conduct a hearing at a place and time which it shall designate; provided however that the date of the hearing may not be set earlier than 40 days following the mailing of the charges by the National office.

[fol. 60g] Section 3. Trial of the Accused. A written record of the hearing shall be made. There shall be full opportunity for examination and cross-examination of all witnesses. The charged officer may be represented by counsel if permission is granted by the Trial Committee.

The Trial Committee shall have full authority to determine the rules of procedure which shall govern all parties.

The Trial Committee shall have full authority to direct the charged officer to produce or make available to the Trial Committee or its designated agent, any books, records or other documents in the possession or under the direction or control of the charged officer, and to direct any such charged officer to submit to examination.

Section 4. Decision of the Trial Committee. After a full hearing, the Trial Committee shall render a written decision which shall be filed with the National President who shall distribute copies of the same to the charged officer, the parties who filed the charges and to each member of the National Executive Committee. Said decision shall either recommend a dismissal of the charges in whole or in part, or a suspension or dismissal from office of the charged officer, or such other course of action which it deems necessary to obtain compliance with the National Constitution or National Policy.

Any decision which calls for the suspension or dismissal from office of the charged officer shall also contain a provision relating to the membership of said charged officer. In the case of a suspension or dismissal of the charged officer from office, his membership can be suspended or in the case of a dismissal, he may be expelled from membership. Also in case of dismissal, the charged officer shall be barred from holding any office, position or employment in the National Association or District. In the case of a suspension

or dismissal of the charged officer, the decision may also incorporate a provision for the appointment of an Administrator to act in the place of the suspended or dismissed officer.

The full record of the proceeding shall be deposited at the National Office of the National Association.

Section 5. Appeal to the National Executive Committee. In the event either the charged officer or the charging parties desire to appeal to the National Executive Committee, notice of the same, together with a memorandum setting forth the exceptions taken and a brief comment thereon, shall be filed with the National President within 20 days of the mailing by the President of the Trial Committee's decision.

If no such appeal is taken within the prescribed time, the decision of the Trial Committee, if it is based on a majority vote, shall be deemed to be final.

Section 6. Decision of the National Executive Committee. The National Executive Committee, on the basis of the entire record, shall render its entire decision in the event an appeal has been taken. Such decision may call for the dismissal of the charges in whole or in part, or for the suspension or dismissal from office of the charged officer, or for such other course of action which may be necessary to obtain compliance with the National Constitution or National Policy. A copy of such decision shall be forwarded to the District and to the charging parties.

Any decision which calls for the suspension or dismissal from office of the charged officer shall also contain a provision relating to the membership of said charged officer. In the case of a dismissal of the charged officer from office, his membership can either be suspended or he may be expelled from membership. Also in the case of dismissal, the charged officer shall be barred from holding any office, position or employment in the National Association or District. In the case of a suspension or dismissal of the charged officer, the decision may also incorporate a provision for the appointment of an Administrator to act in place of the suspended or dismissed officer.

Any member of the National Executive Committee or any National elected officer, who may have filed the charges, may attend any meeting of the NEC at which time the matter is under consideration but he shall not participate in a discussion or in the vote taken thereon, provided, however, that the National President, though he may have filed the charges, shall nevertheless preside over any meeting of the National Executive Committee considering the matter, but be subject to the above indicated restrictions. The decision of the National Executive Committee shall be final until amended or reversed by the National Convention.

Section 7. Appeal to the National Convention. An appeal may be taken by either the charged officer or the charging parties from the action of the National Executive Committee to the next regular Convention or to a panel of three public persons who shall be designated by the National Executive Committee. The person taking the appeal shall, when requesting the appeal, indicate which alternative is desired. Notice of such appeal must be filed with the National President no later than 30 days from the mailing of the decision of the National Executive Committee and all briefs in support of the appeal must be submitted simultaneously with the filing of the notice of appeal. The decision of the National Convention or the National Panel, as the case may be, shall be final and conclusive. The National Convention and the National Panel shall have the authority to determine their respective procedures applicable to such appeals.

Section 8. Required Vote for Suspension or Dismissal. The suspension or dismissal of an officer may be accomplished by a majority vote of the NEC, or in the case of the National Convention, majority vote of the delegates.

Section 9. Immediate Suspension. Whenever charges are duly filed hereunder against an officer, the National Executive Committee shall have the authority, if in their determination it shall be necessary to do so in the interest of the National Association and the members of the District pending the decision of the National Executive Committee,

to suspend the charged officer and to designate an Administrator who shall assume the powers and duties of the suspended officer and who shall occupy the same status as provided in Section 10 below.

Section 10. Appointment of Administrator. In the event an Administrator is appointed, as provided above, said Administrator shall assume all of the powers and duties of the officer whom he is replacing, and all books and documents and records of the Districts which are in the possession or subject to the control of the suspended or dismissed officer, shall be turned over to the Administrator to be held and administered for the benefit of the members of the District, provided, however, the Administrator so appointed may not act as a delegate from such District to any National Convention unless he has been chosen by secret ballot in any election in which all the members in good standing of such District were eligible to participate, and the Administrator shall not transfer to the National Association any current receipts or other funds of the District except the normal per capita tax and assessments payable by Districts not in trusteeships.

Section 11. Criminal or Civil Liability. A decision rendered in favor of or against any accused under the provisions of this Article shall not in any way effect his criminal liability or his civil liability under the law to the National Association or any District.

ARTICLE IX

Code of Trial by Charges

All violations of laws, rules or regulations of Districts shall be tried by the District within whose jurisdiction the offense has been committed and if charges are proven, the penalties imposed shall be enforced by the District of which the offender is a member, subject, however, to the right of appeal in accordance with the provisions of this Article.

When members of Districts are accused of an offense which, if proven, would subject them to a penalty, the proceedings in the premises shall be conducted in accordance with the following rules:

1. The accusation shall be reduced to writing, specifying, first, the charges; and, second, the circumstances and acts upon which the charges are based, together with the time and place, as nearly as can be ascertained.

2. The charges and specifications shall be presented to the District at a regular meeting, signed by two or more members in good standing, and if received by a vote of the District, the Chief Executive officer of a District, shall forthwith, and under the seal of the District notify the accused Brother that charges have been regularly preferred against him and shall serve or cause to be served upon the accused, personally, if practicable, otherwise by mail, directed to the last known address, with the postage prepaid thereon, a copy of the charges and specifications, attested by the Secretary, and under the seal of the District together with a notice directing the accused to be present at a regular meeting of the District or of a committee, duly appointed at a regular meeting when such charges will be heard. In case of personal service not less than ten, in the case of service by mail not less than twenty days thereafter. Should the accused reside beyond this jurisdiction, thirty days shall be allowed, to appear and answer such charges, or should the accused be employed in any service whereby he cannot personally be brought to trial, such time shall be granted as may be necessary in such case not exceeding sixty days. In case the residence of the accused cannot be ascertained, the District or Committee may proceed ex parte.

3. If the investigation be held before a committee, no person shall be present except the members of said Committee, the accuser, the accused, their counsel and the summoned witnesses, without the consent of the Committee.

4. Each witness shall be examined separately and apart, if desired by the accused, and all testimony shall be reduced to writing by the Committee and reported to the Districts.

5. At the same or such subsequent regular meeting thereafter as the District shall designate, the District shall give the accused, the accuser, or their counsel, an opportu-

nity to discuss the guilt or innocence of the accused, as set forth in the charges and specifications.

6. The parties interested shall have the benefit of counsel if they desire, provided said counsel shall be a marine engineer, and a member of a District in good standing.

7. After the parties and their counsel have been heard before the District, they shall retire therefrom, when the guilt or innocence of the accused shall be open to discussion by the members of the District.

8. The Members of such District shall decide by vote upon the guilt or innocence of the accused, a two-thirds vote of the members voting being necessary to convict; such vote being taken on each specification separately, and upon the charge, if convicted the District shall then by a two-thirds vote declare a degree of punishment.

9. The Committee shall have the power to send for persons and papers on behalf of the parties interested and to procure from the Chief Executive officer of a District, such summons thereof in due form as may be necessary for that purpose, and may adjourn the hearing from time to time in its discretion.

10. The Committee may employ a stenographer at the request of either or both parties making such request paying all the expenses thereof.

11. The accused or any member of the District aggrieved by the decision thereof may appeal the case to the National Executive Committee; but such appeal must be prepared and submitted within sixty days after such decision. The findings of the National Executive Committee shall be final, unless by appeal such decision is reversed by the National Convention.

12. In the event, an elected official of a District accused by a member, orally or in writing, of any misconduct or nonfeasance in office, said official shall have the right, at his option, to file charges against such member with the National Executive Committee. Upon the filing of such charges, all procedures to be followed shall be the same as

in the case of charges filed against an elected officer under Article VIII, and any penalty, if imposed shall be in accordance with Article X hereof.

ARTICLE X

Penalties

Section 1. Any member of a District who shall be found guilty in accordance with provisions of this Constitution of having violated any of the provisions of the Constitution of the National Marine Engineers' Beneficial Association or of the Constitution or Bylaws of the District or any provisions of any collective bargaining agreement covering the members of the District shall be subject to punishment as herein provided.

Section 2. Degree of Punishment

1. Public reprimand.
2. Fined for a proven offense.
3. Fined for each proven repetition of offenses.
4. Suspended pending reinstatement by the Association.
5. Suspended for a stated period.
6. Suspended pending payment of dues, fines or assessments, according to Bylaws of Districts.
7. Dropped from the roll of membership.
8. Dropped from the roll of membership with fine or fines charged to their account.

Penalties

Section 3. Districts shall not impose upon guilty members more than one of the above defined degrees of punishment upon any one charge, and in no case shall the total of fines for any several charges exceed $1,000.00 or the term of suspension exceed two years, suspended members who are not reinstated before the expiration of such period shall then be dropped from the roll of membership. In cases where members are fined they may be suspended pending

payment of same or they may be given sixty days before such suspension is enforced. Provided that for contempt of Rules of Order which may be imposed by the Chair at a meeting of a District the maximum fine shall be $10.00.

Section 4. When members are suspended their dues shall cease. If members are dropped from membership for any reason, and such persons desire to re-enter the District they must pay all their indebtedness to the District and make application for reinstatement as provided for in Article XIII, Section 5, of the National Constitution.

Section 5. Members who may lose their license on complaint of a Captain or owner or other person shall not be suspended or dropped from the roll of membership until their conduct shall have been investigated by the District of which they are members, which shall decide whether or not they shall retain their membership. Any disciplinary action taken against a member hereunder must be in compliance with the procedures set forth in Article IX hereof.

Section 6. The shipping rules of the Districts shall not be deemed to be in conflict with the trial procedure in Article IX, provided that accused violators of such shipping rules must, before being disciplined, be served with specific written charges, be given a reasonable time to prepare their defense and afforded a full and fair hearing, in accordance with orderly procedure as set forth in said shipping rules.

Section 7. Each District shall hold at least one meeting each month which shall be held on the date set forth in its Bylaws.

Section 8. No monies shall be appropriated from the treasury of any District for political purposes to any Communist or Communist front organization or to any totalitarian group or any Committees in defense of such groups. The above mentioned organizations shall be those specified on the official lists published by the U. S. Attorney General's Office.

ARTICLE XI

Order of Business Districts

Each District shall provide in its Bylaws for the order of business for its meetings.

ARTICLE XXII

Rules of Order

Each District shall provide in its Bylaws for the Rules of Order to govern the conduct of its meetings.

[fol. 60h] Proof of Service (omitted in printing).

[fol. 90] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

JESSE M. CALHOON, as President, etc., of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO, Defendant.

AFFIDAVIT OF BURTON H. HALL—Filed September 3, 1963

State of New York,
County of New York, ss.:

Burton H. Hall, being duly sworn, says that he is attorney for the plaintiff herein and that he submits this affidavit in opposition to defendant's motion to dismiss the complaint herein.

Defendant's motion, brought on by order to show cause, was served upon your deponent on Friday afternoon, August 16, 1963; the moving papers consisted solely of a two page affidavit plus the formal notices. No memorandum of law was served.

It is clear, however, that defendant is here proceeding upon a misconception of law. That misconception derives from a failure to perceive the distinction, so far as federal jurisdiction, is concerned, between a suit *to vindicate a candidacy* (over which there is no statutory federal jurisdiction in LMRDA cases) and a suit *to protect membership rights* (over which there is very clear statutory federal jurisdiction, set forth in Title I of the LMRDA).

Title I of the LMRDA—the "Bill of Rights of Members of Labor Organizations"—is exactly what it says it is, a bill of *members'* rights. Insofar as an officer or employee [fol. 91] of a union is also a *member* of that union and seeks protection *for his membership rights*, he is protected under Title I and federal jurisdiction attaches to his claim. This is so whether he is an officer of the union (cf. *Salzhandler* v. *Caputo*, 2d Cir. 1963, 316 F. 2d 445) or a staff employee of the union (cf. *King* v. *Grand Lodge*, N.D. Calif. 1963, 215 F. Supp. 351) or even president of the union (cf. *Vars* v. *Int'l Brotherhood of Boilermakers*, 2d Cir. 1963, 53 LRRM 2691, n/o/r).

But the important thing in all these cases is that the plaintiff—be he piecard or rank-and-filer—is asserting a *membership* right, and claiming that his *membership* right, protected under Section 101 of the LMRDA, is being infringed, or has been infringed—hence an action will lie under Section 102 of the LMRDA.

Contrariwise, there is no right under Title I—and hence no federal statutory right—*to be an officer* or *to be a union employee* or *to be a candidate for office*.

The present case illustrates this distinction. Here, three members bring suit, on behalf of all members of defendant union, to protect the members' statutory right, under Section 101(a)(1) of the LMRDA, *"to nominate candidates."* Plaintiffs were deprived of this right, so were many other members. And virtually all members of defendant union suffered infringement of this right to some degree. Plaintiffs do *not* assert any right *to be* candidates; they assert a membership right *to nominate* candidates. And, in their complaint (though not on their motion for a preliminary injunction) they also assert a membership right *to vote*

in union elections. These rights are protected under Title I of the LMRDA, and federal courts have jurisdiction over their claims.

[fol. 92] The distinction may be put another way: let us suppose that the plaintiffs in this case brought suit, not to protect their rights (and the rights of other members) to nominate candidates, but to vindicate their own candidacies —to demand simply that their names be placed on the ballot. If such were their claim, your deponent will concede (for the sake of the argument) that there would be no federal statutory jurisdiction. Because in such a (hypothetical) case, they would not be asserting rights *as members* but rather rights *as candidates*.

The distinction has been explained in a variety of cases, perhaps most helpfully in a case cited in plaintiff's memorandum of law: *Wayfield* v. *Babcock*, E.D.N.Y. 1963, 53 LRRM 2947, 47 LC Para. 18,375, n/o/r.

In that case, Judge Dooling for the Eastern District of New York emphasized that a federal court had jurisdiction —and he affirmatively took jurisdiction—over a suit claiming infringement of plaintiffs' rights to nominate candidates secured to them by Section 101(a)(1) of the LMRDA. And he emphasized the distinction that separates such a case from that brought to protect claimed candidacy rights: "Different are the cases that deny that Title I confers any rights of action in the federal court on a candidate as such or to vindicate a candidacy."

The Court of Appeals for this Circuit has flatly held that a federal court *does* have jurisdiction over a suit brought, in advance of an election, to protect the rights of union members to vote in that election and to nominate candidates, by seeking fair election procedures. *Boggia* v. *Hoffa*, 2d Cir. 1961, 47 LRRM 2594, 41 LC Para. 16,732, n/o/r; and cf. the other cases cited in plaintiffs' memorandum of law. *Boggia* was originally brought in State court but was removed to federal court, specifically *because* the federal court had jurisdiction under Title I of the LMRDA. The present case stands on the same footing.

[fol. 93] Wherefore, plaintiffs' motion for a preliminary injunction should be granted—for the members' right to nominate candidates in the 1963 elections of defendant has

been, and is being, in fact infringed—and defendant's motion to dismiss should be denied.

Burton H. Hall.

Sworn to before me this 20th day of August, 1963.

Gussie Chabus, Notary Public, State of New York, No. 03-0608850, Qualified in Bronx County, Cert. filed in New York County, Commission Expires March 30, 1965.

[fol. 94] Summons and Return (omitted in printing).

[fol. 97] [File endorsement omitted]

In United States District Court

Southern District of New York

63 Civ. 2401

Raymond H. Harvey, Herman Shapiro and John Galletta, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

Jesse M. Calhoon, as President, or Herbert W. Peters, as Secretary-Treasurer of District No. 1, National Marine Engineers Beneficial Association, AFL-CIO, Defendant.

Burton H. Hall, Esq., of New York, N. Y., Attorney for Plaintiffs.

Pressman & Scribner, Esqs., of New York, N. Y., Attorneys for Defendant, David Scribner, Esq., Of Counsel.

Opinion—August 31, 1963

Feinberg, D.J.

This is a motion for a preliminary injunction brought by three members of District No. 1, National Marine Engineers [fol. 98] Beneficial Association ("District No. 1"), on behalf of themselves and others similarly situated, against District No. 1, its President or Secretary-Treasurer. The

complaint alleges jurisdiction under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "Act"),[1] 29 U.S.C. § 412. Plaintiffs ask this Court to enjoin District No. 1 from holding a general election of local union officers on the ground that plaintiffs' rights to nominate candidates, as secured to them under Section 101(a)(1) of the Act, 29 U.S.C. § 411(a)(1), have been infringed. Plaintiffs also allege that defendant District No. 1 has failed to appoint an impartial administrator to supervise the forthcoming election, and claim that this failure not only violates their rights to vote under Section 101(a)(1) of the Act, 29 U.S.C. § 411(a)(1), but also contravenes a provision of the District's bylaws which requires designation of an impartial administrator. Defendant has filed a cross-motion to dismiss the complaint on the grounds that this Court lacks jurisdiction over the subject matter, and that the complaint fails to state a claim upon which [fol. 99] relief can be granted.

The important facts are not in dispute, and, as they appear from the affidavits filed by both parties, may be summarized as follows: the National Marine Engineers Beneficial Association ("NMEBA"), a national affiliate of the AFL-CIO, represents over ninety per cent of the licensed marine engineers in the United States. It is now composed of various district organizations; District No. 1, of which plaintiffs are members in good standing, has over 6,000 members. The District will hold a general election during the ninety-day period commencing September 1, 1963, and it is this election which plaintiffs seek to enjoin. Counsel have stipulated that the mailing of ballots would not of itself adversely affect or enlarge the rights and obligations of the parties to the proceeding.

Prior to January 1, 1961, NMEBA was composed of various "locals." At that time, a member could nominate any other member for local office, subject to certain eligibility requirements. On January 1, 1961, NMEBA was [fol. 100] reorganized on a "district" basis, and thereafter certain changes, of which plaintiffs complain, were made in nomination procedures and eligibility requirements for officers.

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[1] Commonly known as the "Landrum-Griffin Act."

(1) Members of District No. 1 are confined to self nomination. Article X of the bylaws of District No. 1 provides:

"Elections for District-wide Offices

"Section 1. Nominations. Any member may submit his name for nomination for the offices of District President, District Vice President, Branch Agent, Patrolman . . . or Representative to the National Convention by delivery in person or sending by registered mail, a letter addressed to the Credentials Committee."[2]

(2) In March 1963, the national constitution of NMEBA was amended to provide that only those non-officer members who have served 180 days or more of sea time on NMEBA-contracted vessels in two of the previous three years are eligible for nomination, that no member may be a candidate for District President unless he is a full time paid official of the union, and that no member may run for Dis- [fol. 101] trict office unless he has been a member of NMEBA for five years. Article X, Section 9 of the Constitution of NMEBA provides:

"Any member shall be eligible for nomination to and election as a full time and paid elective office of a District provided he is at the time of nomination and election a member of good standing and (a) has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of closing of nominations; and (b) has been a member of the District and/or predecessor Subordinate Association for 2 years immediately preceding said date; and (c) has had either 180 days of employment on vessels covered by collective bargaining agreements with the Union during each of any 2 full calendar years of the 3 calendar years immediately preceding the closing date of nominations, or equal time served as full time and paid elected or appointed official of the National Association or of a Subordinate Association or the Dis-

[2] See Exhibit "A" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

trict or of any other organization which has duly affiliated with the National Association.

"A candidate for District President, in addition to the qualifications specified above, must have previously been elected and served as a full time and paid official of a Subordinate Association, District or of any other organization which has duly affiliated with the National Association."[3]

[fol. 102] (3) Under a ruling of the Credentials Committee of District No. 1, members are prohibited from nominating themselves to more than one office.

Plaintiffs contend that the above bylaw, constitutional amendment and ruling by the Credentials Committee unreasonably deprive members of District No. 1 of their right to nominate candidates as guaranteed to them under Section 101(a)(1) of the Act, 29 U.S.C. § 411(a)(1). Defendant contends that this Court is without jurisdiction to entertain this motion, that plaintiffs have made no showing warranting the relief sought, that plaintiffs have failed to exhaust their intra-union remedies, and that, in any event, plaintiffs have been guilty of laches.

Consideration of defendant's jurisdictional argument requires an examination of the Labor-Management Reporting and Disclosure Act of 1959, a comprehensive statute which protects the rights of union members through various remedies. Title I of the Act is entitled "Bill of Rights of Members of Labor Organizations." Contained within Title I is Section 101(a)(1), 29 U.S.C. § 411(a)(1), which pro-[fol. 103] vides:

"Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to *nominate candidates*, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, *subject to reasonable rules and regulations in such organization's constitution and bylaws.*" (Emphasis added.)

[3] See Exhibit "C" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

A procedure to enforce these rights is provided in Section 102 of the Act, 29 U.S.C. § 412. This section permits any person, whose rights under Title I have been infringed, to bring a civil action in a Federal District Court for appropriate relief.

Title IV of the Act is entitled "ELECTIONS" and subtitled "Terms of office; election procedures." This Title includes Section 401(e) of the Act, 29 U.S.C. § 481(e), which states:

> "In any election required by this section which is to be held by secret ballot *a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504* [fol. 104] *and to reasonable qualifications uniformly imposed)* and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." (Emphasis added.)

The remedy for a violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), is specifically set forth in Section 402 of the Act, 29 U.S.C. § 482. Section 402, in substance, provides a post-election remedy whereby complaint is made to the Secretary of Labor who institutes a civil action if he finds upon investigation that there is probable cause. That section states:

> "(a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
>
> (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,
>
> may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor

organization pertaining to the election and removal [fol. 105] of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

"(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

Thus, the structure of the Act clearly differentiates between violations of Title I and Title IV, and different remedies are provided for each.

Defendant's jurisdictional attack is based on two premises: this Court has no pre-election jurisdiction over Title IV violations, and plaintiffs' complaint alleges, in fact, [fol. 106] only such violations, although jurisdiction is stated in terms of Title I.

On the first point, the cases indicate that defendant is correct and that the only remedy for violations of Title IV is the post-election procedure initiated by a complaint to the Secretary of Labor. This was the conclusion reached by Judge Wyatt of this Court in *Jackson* v. *NMEBA*[4] decided only a few weeks ago. That case involved an attack on two of the rules complained of by plaintiffs here (the self-nomination requirement and the requirement of previous

[4] 63 Civ. 2226, S.D.N.Y., August 16, 1963.

service as a full time paid elected official). In the course of denying relief to plaintiffs, the Court stated:[5]

> "It is the eligibility requirements which plaintiff attacks and these are *exclusively* dealt with by Section 401(e) [of Title IV]. Where a particular subject is dealt with by a section of the Act—for example, the eligibility of candidates in Section 401(e)—it must be assumed that Congress intended the specific provisions to govern and not the general provisions of Section 101(a) [of Title I]."

[fol. 107] Other cases support the proposition that the Federal District Courts do not have jurisdiction for violations of Title IV, except in accordance with the procedure set up in the statute which calls, in the first instance, for an investigation by the Secretary of Labor. See *Mamula* v. *United Steelworkers*, 304 F.2d 108 (3 Cir.), *cert. denied*, 371 U.S. 823 (1962); *Colpo* v. *Highway Truck Drivers and Helpers*, 201 F. Supp. 307 (D. Del. 1961), *vacated as moot*, 305 F.2d 362 (3 Cir.), *cert. denied*, 371 U.S. 890 (1962); *cf. Hamilton* v. *Guinan*, 199 F. Supp. 563 (S.D.N.Y. 1961); *Acevedo* v. *Bookbinders and Machine Operators*, 196 F. Supp. 308 (S.D.N.Y. 1961). Although a contrary view has been advanced,[6] it appears that the authority is the other way.

Plaintiffs appear to recognize the force of this authority, because they emphasize that complaint is made only of alleged violations of Title I. Each of the rules they attack, according to plaintiffs, interferes with the right to nominate [fol. 108] as guaranteed them by Section 101(a)(1) of the Act quoted above. Plaintiffs contend, for example, that they may challenge under Title I the reasonableness of the requirement of sea time because they have a right to nominate someone who has not had sea time. However, the

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[5] *Id.* at 5.

[6] See Summers, *Pre-Emption and the Labor Reform Act—Dual Rights and Remedies*, 22 Ohio St. L. J. 119, 135-140 (1961); American Bar Ass'n, Labor Relations Law, 1962 Proceedings, at 74-76.

requirement of sea time is clearly a "qualification" on candidacy dealt with by Title IV. It is true that a requirement of sea time, as a prerequisite to candidacy, limits the number of people plaintiffs can nominate. However, it is hard to imagine any rule or requirement on candidacy, no matter how reasonable, which would not similarly limit the number of people plaintiffs might nominate. If plaintiffs' argument were accepted, every eligibility requirement for office would fall within Title I. However, the structure of the Act is clearly different. The reasonableness of the sea time requirement, therefore, must be tested in accordance with the procedures set forth for violations of Title IV and not through the procedures under Title I.

[fol. 109] A similiar point in an analogous situation was made recently in *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E.D. La. 1962), where plaintiffs complained of the disqualification of a candidate for whom they wanted to vote. The Court refused an injunction and pointed out as follows (212 F. Supp. at 82):

> "In the present case, there can be no question but what the complainants herein were not deprived of the right to nominate, nor were they deprived of the right to vote. *Title I of the Act does not, of course, guarantee to any union member the right to vote for a specific person, but guarantees him only the right to vote for a duly nominated and qualified candidate.* The pleadings, on their face, affirmatively show that the complainants herein did, in fact, nominate the candidates of their choice. It was subsequent to the nomination, and during the process of certifying candidates as to their qualifications, that the present dispute actually arose. Whether or not the disqualification of the candidates in question was proper is a matter to be resolved in accordance with the provisions of Title IV of the Act. Title IV deals comprehensively with the procedure for nominating and electing officials. It provides that reasonable opportunities must be given members to nominate, and that every member in good standing shall be eligible to be a candidate and to hold office subject to, or course [sic], reasonable rules and regu-

[fol. 110] lations of the union. Title IV further specifically sets forth in 29 U.S.C.A. § 482 that violation of the provisions outlined therein can only be enforced by the Secretary of Labor once an election is held." (Emphasis added.)

All of the matters complained of by plaintiffs appear to be qualifications on eligibility for candidacy and, therefore, their reasonableness or lack of reasonableness will have to be tested in accordance with Title IV procedures. This is certainly true not only of the sea time requirement, but also of the requirements of five year prior membership in the union in order to run for office, limitation to candidacy for only one office, and the necessity of being a full time paid prior official in order to run for union president. It may be possible to view the self-nomination requirement as a Title I problem rather than a Title IV problem, but even if it is, the requirement seems reasonable. This certainly was the Court's view in *Jackson* v. *NMEBA, supra,* when it stated that such a provision "makes it as easy to be nominated [fol. 111] as possible." *Id.* at 5. Defendant points out that under this provision, a member does not even have to attend a union meeting or conference to place his name in nomination, but can write a letter to the union from any port in any part of the world declaring his candidacy. While the new provision does have a limiting effect in some ways, the argument that it is, on the whole, reasonable is persuasive.

Therefore, with regard to all of the complaints on eligibility and nomination procedure, it appears that this Court is without jurisdiction to consider them or in the case of the self-nomination procedure, the complaint is not well-founded. The cases relied on by plaintiffs do not compel a contrary view. *Wayfield* v. *Babcock*, 47 CCH Lab. L. Rep. ¶ 18,375 (E.D.N.Y. 1963), did not deal with a Title IV violation, but with a Title I violation involving an allegation that a member's right to vote in secret was lost. Similarly, *Boggia* v. *Hoffa*[1] dealt with eligibility of members to vote, also clearly a Title I problem.

[1] 41 CCH Lab. L. Rep. ¶ 16,731 (E.D.N.Y.), *modified*, 41 CCH Lab. L. Rep. ¶ 16,732 (2 Cir. 1960), *motion to certify result of election granted*, 41 CCH Lab. L. Rep. ¶ 16,733 (E.D.N.Y. 1962).

With regard to plaintiffs' claim that an impartial administrator has not been designated in accordance with the Dis- [fol. 112] trict's bylaws, the answering affidavit of defendant makes clear that an impartial administrator has, in fact, been designated.[8] Since this is not seriously in dispute, the Court will not consider the claim further at this time.

On the entire record, I do not feel that plaintiffs have shown by clear and convincing facts that they have a reasonable probability of success in final hearing on this matter. Because of the disposition on defendant's main point, it is unnecessary to consider its other arguments, such as failure to exhaust intra-union remedies and laches.

The foregoing shall constitute findings of fact and conclusions of law in accordance with Fed. R. Civ. P. 52(a). The motion to dismiss is granted and the application for a preliminary injunction is denied. Submit order on notice.

Dated: New York, N. Y., August 31, 1963.

Wilfred Feinberg, U. S. D. J.

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[8] Affidavit of Jesse S. Calhoon in Opposition to Application for Preliminary Injunction, pp. 1-3.

[fol. 114] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 2401

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers Beneficial Association, AFL-CIO, Defendant.

ORDER—September 4, 1963

This cause came on to be heard before the Court on August 20, 1963, on plaintiffs' application for a preliminary injunction and on defendants' motion to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter and the Court having denied the application for a preliminary injunction and having granted the motion to dismiss the complaint, and the Court having filed its Opinion, Findings of Fact and Conclusions of Law, dated August 31, 1963, it is hereby

Ordered and Adjudged that the complaint herein be and the same is hereby dismissed for want of jurisdiction and that the application for a preliminary injunction be and the same is hereby denied and that defendants recover of the plaintiffs their costs.

Dated: September 4, 1963.

Wilfred Feinberg, United States District Judge.

Judgment Entered 9/4/63, James E. Valeche, Clerk.

[fol. 114a] Copy received September 4, 1963, and approved in form.

Burton H. Hall, Attorney for Plaintiffs.

[fol. 115] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 2401

[Title omitted]

NOTICE OF APPEAL—Filed September 5, 1963

Notice is hereby given that the plaintiffs herein hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in this action on September 4, 1963, denying plaintiffs' motion for a preliminary injunction and dismissing the complaint herein, and from all parts and portions of said order.

Dated: September 5, 1963.

Burton H. Hall, Attorney for Plaintiffs, Office and P. O. Address, 136 Liberty Street, New York 6, N. Y.

To:

Pressman & Scribner, Esqs., 50 Broadway, New York, N. Y. 10004.

[fol. 116] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 117]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 168—September Term, 1963.

Argued October 23, 1963

Docket No. 28445

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

—v.—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO Defendant-Appellee.

Before: LUMBARD, Chief Judge, MEDINA and FRIENDLY, Circuit Judges.

Appeal by members of a labor union from an order of the District Court for the Southern District of New York, Wilfred Feinberg, Judge, dismissing for want of jurisdiction a complaint alleging that the union had deprived plaintiffs of their equal right to nominate in violation of §101 (a)(1) of the Labor-Management Reporting and Disclosure Act of 1959. Reversed.

[fol. 118] Burton H. Hall, New York, N. Y., for Appellants.

David Scribner (Pressman & Scribner, New York, N. Y.), for Defendant-Appellee.

OPINION—November 7, 1963

FRIENDLY, Circuit Judge:

On August 12, 1963, plaintiffs, members of District No. 1, National Marine Engineers' Beneficial Association, a labor organization consisting of some 6000 marine engineers, in-

stituted this action in the District Court for the Southern District of New York against the District Association, its President and its Secretary-Treasurer. The complaint asserted that the action was brought on behalf of plaintiffs and all other similarly situated members of the union to prevent the infringement of rights guaranteed by §101 (a)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (hereafter LMRDA), 29 U. S. C. §411(a)(1); the jurisdiction of the district court was laid under §102. Believing that in fact the complaint alleged only a violation of §401 of LMRDA, 29 U. S. C. §481, and that the Act did not confer jurisdiction on a federal court to entertain a suit by union members to prevent a violation of that section, Judge Feinberg dismissed the complaint for want of federal jurisdiction. We think the complaint alleged a violation of §101(a)(1) and that federal jurisdiction existed under §102.

The complaint set forth that bylaws, imposed upon District No. 1 by a District Executive Committee composed of officials of its various locals, provide that the only candidate whom a member may nominate for any office is himself; that the practice of the District prohibits a member from nominating himself for more than one District office; that the national constitution of the union further restricts [fol. 119] members' right to nominate by providing that no member other than an incumbent official is eligible for nomination or election to a full-time elective office unless he has been a member for five years and has served 180 days or more of sea time on vessels covered by collective bargaining agreements with the national organization or its subsidiary bodies in each of two of the three years preceding nomination; and that the national constitution further provides that a candidate for the office of District President must have previously been elected and served as a full-time and paid official of an organization affiliated with the national body. The complaint prayed that an impending election under these provisions should be enjoined, as well as for other relief. An affidavit of plaintiff Harvey, submitted in support of a motion for a temporary injunction, enlarged upon the complaint by alleging that defendant was holding its first general election during the 90-day period beginning

September 1, 1963; and that each plaintiff had been denied any right to nominate because he could nominate only himself but was ineligible for failure to meet the 180-day sea time requirement. Defendant's cross-motion to dismiss the complaint did not challenge plaintiffs' allegations but contended that these did not make out a case under §101(a)(1) of LMRDA and that in any event the court was without jurisdiction.

Title I of LMRDA, "Bill of Rights of Members of Labor Organization," was added during the Senate's consideration of the Kennedy-Ervin bill, S. 1555, 86th Cong., 1st Sess. (1959), as reported by the Committee on Labor and Public Welfare. The initial proposal by Senator McClellan, adopted on April 22, 1959, see NLRB Legislative History of Labor-Management Reporting and Disclosure Act of 1959, 1102, 1119 (1959), was substantially amended in a form proposed by Senator Kuchel and passed by the Senate on April 25, *id.* at 1220, 1239 ff. The bill later passed [fol. 120] by the House of Representatives and the statute as enacted contained provisions similar to Senator Kuchel's amendment. For our purposes the vital ones are the portion of §101(a)(1) which declares that "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization * * *" and §102, which reads as follows:

> "Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

The Kennedy-Ervin bill had included a Title III—Elections which became Title IV of LMRDA. Section 401 contains a considerable number of substantive provisions. Among these are requirements concerning the frequency

and manner of election of officers, distribution by the union of campaign literature at a candidate's request and nondiscrimination in the use of membership lists,[1] availability of such lists for inspection by a candidate, "adequate safeguards to insure a fair election • • • including the right of any candidate to have an observer at the polls and at the counting of the ballots," the notice of an election to be given to members etc. Most important here are the first and third sentences of §401(e):

> [fol. 121] "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. • • • Each member in good standing shall be entitled to one vote."

Section 401 is followed by §402, entitled "Enforcement." This says, in relevant part, that a member of a labor organization who has exhausted union remedies or has failed to obtain a final decision within three months after invoking them "may file a complaint with the Secretary [of Labor] within one calendar month thereafter alleging the violation of any provision of section 401"; and that

> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization main-

[1] This requirement is made "enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office." §401(c).

tains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe."

[fol. 122] Section 403, headed "Application of Other Laws," provides

"Sec. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

It is plain enough that §401 covers a much wider territory with respect to union elections than the guarantees of equal rights and privileges to nominate and to vote contained in §101(a)(1). Whereas §101(a)(1) is directed solely to basic rights of members, §401 deals both with rights of members, which it grants with far greater elaboration and specificity than the earlier section, and with rights of candidates.

It is not contended that the instant action, brought before the distribution of ballots had begun and for the purpose of enjoining an election under the allegedly illegal provisions of the District's bylaws and the national's constitution, encounters the bar of the last sentence of §403, making a suit by the Secretary of Labor the exclusive remedy "for challenging an election already conducted * * * ".[2] Neither,

[2] Counsel stipulated that the mailing of the ballots would not adversely affect or enlarge the rights and obligations of the parties. In any event, an election has not been "conducted" in our view at least until the time for balloting has expired. We are not

in the view we take of the case, need we consider the much [fol. 123] mooted question whether the substantive provisions of §401 (other than the provision noted in fn. 1) create claims enforceable by private pre-election suits in state or federal courts.[3] For we hold that the complaint alleged a violation of §101(a)(1), and that the district court had jurisdiction under §102 to remedy it.

If the union's constitution and bylaws had provided that only paid officials could make nominations for District President and that only incumbent officers or members with 180-day sea time in each of two of the three preceding years could make nominations for any other office, it could hardly be asserted that the members had "equal rights and privileges * * * to nominate candidates." Indeed, such a classification of union members would have been deemed invalid at common law, long before the LMRDA. See *Cameron* v. *International Alliance of Theatrical Stage Employees*, 118 N. J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935). Yet the combined effect of the eligibility requirements and the restriction to self-nomination is precisely that. With respect to the rules here in question, the statement of another district judge, relied on by the opinion below, that self-nomination "makes it as easy to be nominated as possible,' is thus too facile. We have no occasion now to consider whether

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called upon to consider whether if an appropriate action has been begun before an election is "conducted" but the election has not been enjoined, §403 would require the court to stop in its tracks once the election was "conducted."

[3] The affirmative, as to most of the provisions, is argued in Summers, Preemption and the Labor Reform Act—Dual Rights and Remedies, 22 Ohio State L. J. 119, 135-140 (1961). A contrary view, at least as to federal jurisdiction, is taken in such cases as *Johnson* v. *San Diego Waiters Union*, 190 F. Supp. 444 (S. D. Calif. 1961), *Colpo* v. *Highway Truck Drivers*, 201 F. Supp. 307 (D. Del. 1961), vacated as moot, 305 F. 2d 362 (3 Cir.), cert. denied, 371 U. S. 890 (1962), and *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E. D. La. 1962). We have noted *Mamula* v. *United Steelworkers of America*, 304 F. 2d 198 (3 Cir.), cert. denied, 371 U. S. 823 (1962) and *Beckman* v. *Local No. 46 Int'l Ass'n of Bridge etc. Workers*, 314 F. 2d 848 (7 Cir. 1963), but find it unnecessary to express any opinion as to the conclusions reached on the facts there at issue.

such severe eligibility requirements as have here been imposed, especially as to the District Presidency, or the self-[fol. 124] nomination restriction, if either stood alone, would still infringe the guarantee of §101(a)(1) to "equal rights and privileges * * * to nominate candidates" or would only raise a question of denial of "a reasonable opportunity * * * for the nomination of candidates" etc. under §401(e). The fact that plaintiffs sought unsuccessfully to nominate themselves and in that sense are complaining also as candidates does not blot out the main trust of their complaint—that the union has deprived members of the equal rights and privileges to nominate guaranteed by §101(a)(1).

Whatever the right answer may be with respect to the permissibility of pre-election suits to enforce rights granted only by §401, we see no reason to think that the assurance of "a reasonable opportunity * * * for the nomination of candidates" given by §401(e), and its consequent overlap with §101(a)(1), should be considered to have withdrawn jurisdiction granted by §102 in a case not affected by the exclusive "post-election" provision of §403. The Senate superimposed Title I on the Kennedy-Ervin bill because it was not satisfied that the latter, including the provisions now contained in Title IV, went far enough in protecting basic rights of union members. It agreed with Senator McClellan's position that the bill should define fundamental rights of union members "just as the rights of the American people are set forth in the Bill of Rights of the Constitution of the United States." Legislative History, 1104, and overrode Senator Kennedy's initial objection that union members were better protected "by present State law, by the provisions of the bill, and by the Taft-Hartley Act." Legislative History, 1108.[4] Moreover, whereas the Mc-

[4] Senator Kennedy in no way opposed the substance of the Bill of Rights proposed by Senator McClellan but feared that it might eliminate protection afforded by state law without creating a satisfactory alternative. Although he voted against the McClellan amendment, Legislative History, 1119, his objections apparently were met by the antipreemption language in §103 of Senator Kuchel's substitute, Legislative History, 1221, and he voted for Title I in that form, Legislative History, 1239.

[fol. 125] Clellan amendment had provided for civil enforcement of the Bill of Rights through suit by the Secretary of Labor (see §103 of the amendment, Legislative History, 1102), the Kuchel amendment substituted the private suit now embodied in §102, this being described as "one of the major changes in the proposal." Legislative History, 1232.

The District Court thus erred in dismissing the complaint for want of jurisdiction.[5] The plaintiffs' right to a temporary injunction against the holding of the election under the present constitution and bylaws is plain, and such an injunction should issue promptly. The district court should also require the union to submit new provisions as to the right to nominate that will meet the mandate of §101(a)(1). See *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, 552-53 (1937); *Brown* v. *Board of Education,* 349 U. S. 294, 300 (1955).

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion. The mandate will issue forthwith.

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[5] We have not overlooked an argument that the first sentence of §403 protects a union against being required to conduct an election "in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title," and that plaintiffs must thus rely on §401(e) rather than on §101(a)(1) in order to win, since §101(a)(1) is not in "this title." We do not think the statute should be read so literally, particularly in view of the legislative history summarized above, and therefore need not consider an alternative argument that in a suit based on §101(a)(1) a plaintiff can avail himself of §401(e) as a replication to a defense based on §403 even if §402 is the exclusive remedy for affirmatively enforcing Title IV rights (other than those noted in fn. 1). Compare *Skelly Oil Co.* v. *Phillips Petroleum Co.,* 339 U. S. 667, 672 (1950).

[fol. 126]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge, Hon. Harold R. Medina, Hon. Henry J. Friendly, Circuit Judges.

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

v.

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, Defendant-Appellee.

JUDGMENT—November 7, 1963

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is revised and that the action be and it hereby is remanded for further proceedings consistent with the opinion of this court with costs to the appellants.

A. Daniel Fusaro, Clerk.

[fol. 127] [File endorsement omitted]

[fol. 128]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 28445

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

—against—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer, of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, Defendant-Appellee.

ORDER TO SHOW CAUSE

Upon all the papers and proceedings herein and the affidavit of David Scribner, sworn to November 8, 1963, it is

Ordered that the appellants show cause to this Court in Room , United States Court House, Foley Square, City and State of New York, on the day of November, 1963, at o'clock of that day or as soon thereafter as counsel can be heard why an order should not be made staying the mandate or decree of this Court pending action by the Supreme Court of the United States on the application of defendant-appellee for certiorari to the said Court, or in the alternative that the Court withhold the issuance of mandate until expiration of fifteen days from November 7, 1963, the date of the opinion of this Court and for further relief as may be appropriate, and

It Is Further Ordered that service of this order to show cause, together with a copy of the papers hereto attached, upon Burton H. Hall, Esq., 136 Liberty Street, New York, [fol. 129] New York on or about November , 1962, at o'clock be deemed sufficient service.

.....

Dated: November , 1963.

The within motion will be submitted to the Court (without oral argument) on Tuesday, November 12, 1963 on this and any papers in opposition which will be left with the clerk on or before 10:30 A.M. of that day.

A. Daniel Fusaro, Clerk.

[fol. 130]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

AFFIDAVIT OF DAVID SCRIBNER

State of New York,
County of New York, ss.:

David Scribner, being duly sworn, deposes and says that he is a member of the firm Pressman & Scribner, attorneys for the appellee Union, and is fully familiar with all of the facts and circumstances herein.

1. The opinion of this Court dated November 7, 1963, which appellee received notice of from the Clerk of the Court on the morning of November 8, 1963, and which deponent has read, reverses the judgment of the Court below and remands for the prompt issuance of a temporary injunction against the holding of the election under the present Constitution and By-Laws of appellee. The opinion concludes with the statement "The mandate shall issue forthwith."

2. It appears that if the mandate is in effect issued forthwith that appellee will be denied the opportunity under Rule 28 of applying to this Court within fifteen days after [fol. 131] the filing of the Court's opinion for a rehearing. Deponent will be able to determine whether or not a petition for rehearing will be filed only after he has had the opportunity fully to study and analyze the opinion of this Court.

3. Should the mandate issue forthwith and an injunction against the continuing conduct of the current election be issued, appellee will be denied any meaningful or effective

recourse to this Court for rehearing and will have been finally and effectively denied without any recourse whatsoever his right to petition for certiorari to the Supreme Court of the United States, since for all practical purposes the issues may well be considered mooted should the election be called off in compliance with the injunction which this Court has directed the District Court to issue. Appellee will thereby be denied its right to appeal.

4. Deponent states as a fact to this Court that the count in the election in issue will not be held until January 15, 1964, pursuant to the direction of the Union made in mid-October, 1963. Appellant will therefore in no way be prejudiced by the granting of a stay pending determination of petition for certiorari. However, the appellee Union is ready further to delay the count of the election in the event the Supreme Court has not by January 15, 1964 ruled on the petition for certiorari to be filed by appellee.

5. The appellee has an arguably meritorious position for the granting of a petition for certiorari in that there is an apparent conflict between the decision of this Court and that of the Third Circuit in *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (1962) cert. denied, 371 U.S. 823 (1962) and because the issues here involved are of great public importance in that the interpretation by this Court of the [fol. 132] Labor-Management Reporting and Disclosure Act of 1959 are in conflict not only with the decision of the Third Circuit but, as the Court noted, with decisions of district courts in other circuits.

6. Substantially greater injury will be occasioned the Union and its members if the application for a stay is denied and the present election set aside and a new election ordered than would be occasioned appellant if the stay were granted.

7. In the event this Court denies this application for a stay pending determination of the Supreme Court on a petition for certiorari to be filed by appellee, the Court is respectfully requested to stay the issuance of mandate for a few days to give deponent an opportunity to make application to a Justice of the United States Supreme Court for such a stay.

8. Appellee assures the Court that it will promptly file a petition for certiorari in the United States Supreme Court should the stay be granted.

9. No application for the relief herein requested has been heretofore made to this or any other court.

David Scribner.

Sworn to before me this 8th day of November, 1963.

Barbara Ann Weinstein, Notary Public, State of New York, No. 24-9581575, Qualified in Kings County, Cert. filed in New York County, Commission Expires March 30, 1964.

[fol. 133] [File endorsement omitted]

DENIAL OF MOTION TO STAY ISSUANCE OF MANDATE

Motion denied.

J. Edward Lumbard, Harold R. Medina, Henry J. Friendly.

12 Nov. 1963.

[fol. 134]

IN UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge, Hon. Harold R. Medina, Hon. Henry J. Friendly, Circuit Judges.

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

v.

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, Defendant-Appellee.

ORDER DENYING MOTION TO STAY ISSUANCE OF MANDATE—November 12, 1963

A motion having been made herein by counsel for the appellee to stay the issuance of the mandate pending application for a writ of certiorari to the Supreme Court of the United States or for other and further relief,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.

A. Daniel Fusaro, Clerk.

[fol. 135] [File endorsement omitted]

[fol. 136] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 137]

SUPREME COURT OF THE UNITED STATES

No. 688, October Term, 1963

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, Petitioner,

vs.

RAYMOND H. HARVEY et al., Individually and on Behalf of Other Persons Similarly Situated.

ORDER ALLOWING CERTIORARI—January 20, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The Solicitor General is invited to file a brief expressing the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

COPY

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JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1963

No. [redacted]/7

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1 National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

against

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DAVID SCRIBNER,
PRESSMAN & SCRIBNER,
Counsel for Petitioner,
50 Broadway,
New York 4, N. Y.

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Supreme Court of the United States

October Term, 1963

No.

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1 National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

against

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled matter on November 13, 1963.

Citations to Opinions Below

The opinion of the District Court of the Southern District of New York (R. D. C. 97-113)* printed in Appendix B hereto, *infra*, p. 28 is reported in 221 F. Supp. 545 (S. D. N. Y. 1963). The opinion of the Court of Appeals for the Second Circuit, (R. C. A. 56-64)** printed in Appendix B hereto, *infra*, p. 18, is yet unreported.

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* Record, District Court.

** Record, Court of Appeals.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on November 7th, 1963 (R. C. A. 65) and is printed in Appendix B hereto at p. 27. The jurisdiction of this Court is invoked under 29 U. S. C., Section 1254(1).

Statutes Involved

The statutory provisions involved are the following sections of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519: Section 101(a)(1), 29 U. S. C., Section 411(a)(1); Section 101(a)(4), 29 U. S. C., Section 411(a)(4); Section 102, 29 U. S. C., Section 412; Section 401(e), 29 U. S. C., Section 481(e); Section 402, 29 U. S. C., Section 482; and Section 403, 29 U. S. C., Section 483.

They are printed in Appendix A, *infra*, p. 13.

Statement

Respondents, members of District 1, Marine Engineers' Beneficial Association, instituted their action in the District Court for an order enjoining the conduct of an impending election for Union officers "unless and until defendant has afforded to each of its members a fair opportunity to nominate any persons meeting fair and reasonable eligibility requirements for any or all offices * * *" (R. D. C. 9). The jurisdiction of the District Court was invoked under the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter called the "Act") Section 101(a)(1)* which guarantees "equal rights and privileges * * * to nominate candidates." The complaint alleges that the following Union procedures were unreasonable and in violation of Section 101(a)(1) of the Act:

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* 29 U. S. C., Section 411(a)(1).

1. The District By-Laws which provide "Any member may submit his name for nomination for Union officers in the District * * *."

2. A practice of the Union that a member may not run for or hold more than one full-time District office.*

3. A provision of the Union's National Constitution that a candidate for full-time elective office must have been a member for 5 years and served 180 days of sea-time in each of the 2 of the 3 years preceding nominations on vessels covered by collective bargaining agreements with the Union, or equal time served as a paid full-time elected or appointed official of the Union or any of its affiliated bodies.

4. A provision of the Union's National Constitution that a candidate for the office of District President (an office for which none of the individual plaintiffs sought nomination) must have previously served as a paid full-time official of any affiliated Union body.

The three individual plaintiffs, each of whom had nominated himself for the full-time office of Branch Agent and for no other office were declared disqualified by the Union's Credentials Committee for the sole reason that they did not have the sea-time service required by the Union's Constitution (R. D. C. 46).

Respondents sought a preliminary injunction against the then impending Union election. Petitioner filed a cross-motion to dismiss the complaint on the ground that the District Court lacked jurisdiction under the Act in that the subject matter of the action was governed by the

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* This very practice was upheld by the New York Appellate Division on December 10, 1963 when five judges unanimously affirmed, without opinion, a decision of the State of New York denying an injunction of the very election involved herein. *Roman* v. *Calhoon* (N. Y. Sup. Ct. 1963) 48 C. C. H. Lab. Cas. Para. 18, 524, aff'd (App. Div.) N. Y. L. J. Dec. 11, 1963, p. 14.

provisions of Title IV of that Act**, which permits only the Secretary of Labor to initiate appropriate action.

The District Court dismissed the complaint, holding that the complained of conduct, although alleged to be a violation of Title I of that Act, clearly constituted qualifications for candidacy governed by Title IV of that Act. The Court held that the reasonableness of such qualifications must be tested only in accordance with the provisions of Title IV and not of Title I. The District Court noted that any eligibility requirement for office, no matter how reasonable, would limit the number of persons members might want to nominate, but that under Title IV of the Act the respondents were relegated to the post-election procedure initiated by a complaint to the Secretary of Labor. Otherwise, said the Court, every eligibility requirement for office would fall within Title I. As to the self-nomination procedure, the District Court held that even if it were to be viewed as a Title I problem, it was a reasonable procedure since a member does not even have to attend a Union meeting or conference to place his name in nomination. The Court of Appeals reversed, holding that the District Court had jurisdiction under Title I of the Act in that the "combined effect of the eligibility requirements and the restriction to self-nomination" violated the right of members under Title I to "equal rights and privileges * * * to nominate candidates." The Court noted that it had no occasion to consider whether the eligibility requirements or the self-nomination procedure, each standing alone, would still infringe the guarantee of Section 101(a)(1) of Title I of the Act, or whether each would raise only the question of denial of "a reasonable opportunity * * * for the nomination of candidates" under Section 401(e) of Title IV of the Act.

The Court of Appeals remanded the cause to the District Court with directions to issue an injunction promptly

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** 29 U. S. C., Section 481-484.

against the current election and to require the Union to submit new provisions as to the right to nominate that will meet the mandate of Section 101(a)(1) of the Act.

Question Presented

1. Whether the District Court has jurisdiction to entertain a suit by a union member to enjoin a union election because of an alleged violation of the right to nominate under Title I of the Labor-Management Reporting and Disclosure Act of 1959, where the activity complained of is the alleged failure to provide a reasonable opportunity to nominate candidates and to be eligible to be a candidate as required under Title IV of that Act, which can only be enforced by the Secretary of Labor after an election.

Reasons for Granting a Writ

1. The decision of the Court of Appeals for the Second Circuit (Appendix B, *infra*, p. 18) is in conflict with the decision of the Third Circuit Court of Appeals in *Mamula* v. *United Steelworkers of America*, 304 F. 2d 108 (3d Cir.) cert. den. 371 U. S. 823 (1962) (Appendix C, *infra*, p. 39). In *Mamula*, as here, an action was instituted against a union for an order enjoining an impending election of an officer. Jurisdiction there, as here, was invoked under Title I of the Labor-Management Reporting and Disclosure Act of 1959*, upon the allegation that plaintiff had been denied an opportunity to nominate himself and that plaintiff was thereby denied an equal right and privilege "* * * to nominate candidates" under Section 101(a)(1) of the Act**. The union defendant there, as here, moved to dismiss the complaint on the ground that Title IV rather

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* 29 U. S. C., Sections 411(a)(1) and 412.

** 29 U. S. C., Section 411(a)(1).

than Title I governs the procedure for nominating and electing officers and that under Title IV only the Secretary of Labor may institute an action to vindicate the right guaranteed by Title IV of that Act pertaining to nominations and eligibility.

In Mamula, the District Court held that plaintiff's equal right and privilege to nominate or be nominated as a candidate for district director under Section 101(a)(1) of the Act had been violated by the union's constitution, 198 F. Supp. 652 (D. C. Pa. 1961). The Third Circuit reversed, holding that Title IV rather than Title I governs such conduct and that the District Court lacked jurisdiction.

The Second Circuit held that a union's eligibility requirements for candidates, considered together with a union procedure for self-nomination by members violate the equal right and privilege "to nominate candidates" under Title I of the Act, and that therefore the District Court had jurisdiction (Appendix B, *infra*, p. 24). The Third Circuit held that an outright denial of the right to nominate or to be nominated as a result of the operation of the union's constitution was governed by Title IV rather than Title I, and that the District Court did not have jurisdiction, preemption having been created by Congress in favor of the Secretary of Labor (Appendix C, *infra*, pp. 41-42): In other Circuits, while this issue does not appear to have arisen on a Court of Appeals level, the rulings of the District Courts have been fairly consistent with that of the Third Circuit, as the Court in *Mamula* notes (Appendix C, *infra*, pp. 46-48).

The basic problem is whether violations concerning nominations and candidacy qualification proceedings, which clearly appear to be within the ambit of Title IV of the Act and thereby preempted by the Secretary of Labor, may be the basis for the assumption of jurisdiction by the Federal Courts in actions by individuals other than the Secretary of Labor on the ground that Title IV violations

in some way affect the equal right and privilege to nominate under Title I.

The Second Circuit appears to have blurred, if not destroyed, any distinction between Title IV violations and Title I violations in respect to nomination and eligibility requirements. The Third Circuit recognized a clear dichotomy between Titles I and IV and declared that despite the legislative "interplay" between the two Titles in respect to nomination and eligibility requirements the Federal Courts have no jurisdiction to intervene in the general area covered by Title IV and particularly those covered by Section 401(e) of the Act. On the other hand, the Second Circuit, while acknowledging the "interplay" by its statement that "Section 401 covers a much wider area with respect to union elections than the guarantees of equal rights and privileges to nominate and to vote contained in Section 101(a)(1)," concluded that it had jurisdiction to consider the reasonableness of the very nomination and eligibility requirements covered by Section 401(e) of the Act in order to assert its jurisdiction under Section 101(a)(1) (Appendix B, *infra*, pp. 23-24). The Second Circuit thereby holds in effect that the Federal Courts may invade Title IV areas by considering and determining the reasonableness of nomination and eligibility requirements concededly under Title IV and then support jurisdiction under Title I by holding that such eligibility requirements affect "equal rights and privileges * * * to nominate candidates" under Title I.

It is readily apparent that the Act, at least as it relates to the questions of nominations and election procedures, is hardly a model of legislative clarity. For that very reason, the conflicting views of two Circuits which result in the assertion or denial of Federal Court jurisdiction, depending on which view is adopted, require the earliest resolution by this Court.

2. The question presented is of importance in the administration of the Act, affecting as it does the nomination and election procedures of international and national unions throughout the country as well as the almost countless number of their affiliated or subordinate bodies and subdivisions.

The practical effect of the Second Circuit is the elimination of the Secretary of Labor as a Congressionally designated arbiter in the investigation of the complex areas of nominations and eligibility for candidacy in union elections, since any eligibility requirement for candidates necessarily must have the effect of restricting the right of members to nominate candidates*. Were the Second Circuit's interpretation of the Act to prevail, jurisdiction would be vested in the Federal Courts in respect to almost any complaint made by a private party as to the meaning and effect of union requirements for nomination and eligibility in union elections. The Federal Courts would be free to assume the role relegated to the Secretary of Labor initially to determine whether such requirements were unreasonable. This would constitute an usurpation of the statutory role and authority assigned by Congress to the Secretary of Labor and an elimination of the exper-

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* The District Court made the observation:

"It is true that a requirement of sea time, as a prerequisite to candidacy, limits the number of people plaintiffs can nominate. However, it is hard to imagine any rule or requirement on candidacy, no matter how reasonable, which would not similarly limit the number of people plaintiffs might nominate. If plaintiffs' argument were accepted, every eligibility requirement for office would fall within Title I. However, the structure of the Act is clearly different. The reasonableness of the sea time requirement, therefore, must be tested in accordance with the procedures set forth for violations of Title IV and not through the procedures under Title I." (Appendix B, *infra*, pp. 35-36)

tise of the Secretary of Labor in considering such matters*. In turn, such an approach would open the flood-gates of litigation in the District Court for determinations on those issues in the many thousands of union elections constantly being held throughout the country.**

3. The decision of the Court below is believed to be erroneous and the conflicting decision of the Third Circuit in *Mamula* v. *United Steelworkers of America, supra,* correct.

The Third Circuit obviously assumed a rational intent by Congress to assign designated areas in respect to union elections to the Secretary of Labor for action and to assign to the District Courts direct jurisdiction over the limited area of specific acts of discrimination in respect to the

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* In *Colpo* v. *Highway Truck Drivers,* 201 F. Supp. 307 (D. Del. 1961) vacated as moot, 305 F. 2d 362 (3d Cir.) cert. denied, 371 U. S. 890 (1962), the District Court commented:

> "The Secretary's presence as a party litigant in the civil action which may subsequently be brought is no less crucial; in such capacity he brings all of his expertise to bear on the matter pending, thereby greatly assisting the Court in reaching a sound disposition which comports with the delicately balanced policy considerations implemented by Congress in Title IV."

This Court in holding that the National Labor Relations Board has exclusive jurisdiction when an activity is "arguably" prohibited or protected under the National Labor Relations Act noted the Congressional intent to entrust administration of labor policy under that Act "to a centralized administrative agency, armed with its own procedures and equipped with its specialized knowledge and cumulative experience." *San Diego Building Trades* v. *Garmon,* 359 U. S. 236, 242 (1959). The situation here appears to be analogous.

** While this would apply to practically every union, it assuredly would have an immediate impact on almost all maritime unions since the provisions of the Union's Constitution and its practices here involved are similar to those in other maritime unions and will lead to further extensive litigation and confusion, in the absence of a determination by this Court in the instant case. (R. D. C. 8-9)

equal right of members to nominate candidates. The Second Circuit decision can only be based on an irrational intent by Congress on the one hand to vest jurisdiction in the Secretary of Labor in matters affecting nominations and eligibility requirements and simultaneously to divest the Secretary of Labor of any authority in the event a Federal Court determines that it has jurisdiction under Title I because of the effect of the very conduct governed by Title IV. The Congress must be assumed to have had a rational intent, as described by the Third Circuit in *Mamula*.

Title I of the Act grants jurisdiction to the District Court to remedy violations of Section 101(a)(1) in an action initiated by individual members. The rights enumerated under Title I include "equal rights and privileges within such labor organization * * * to nominate candidates."

It is apparent that Congress intended by this provision to protect union members against discriminatory denial of the right of any member to nominate a candidiate.* Respondents have in fact availed themselves of the equal right under the Union Constitution to nominate themselves.** Since every member of the Union has the right to nominate himself there could not possibly be any discriminatory denial of the right to nominate. Nor would it be proper, under the scheme of the Act, to evaluate

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* "[T]he emphasis, there [Section 101(a)(1)], it seems, is placed on the right of a member to enjoin violations of the Act where one member is granted the right and another is denied it." *McKeon* v. *Highway Truck Drivers and Helpers*, 48 CCH Lab. Cas. Paras. 18,578 (D. C. Del. 1963).

** They were disqualified for that office for the sole reason that they had not complied with the sea-time service requirements of the Union Constitution. (R. D. C. 46). Respondents do not charge that these sea-time requirements were discriminatorily applied to them.

the equal right to nominate in terms of the eligibility requirements for office which are governed by Title IV.*** Were that to be done any distinction between the two Title on this issue * would be obliterated and the Act would thereby become wholly incomprehensible.

Nor can it be said that if the Federal Courts were held to be deprived of such jurisdiction that aggrieved members would thereby be denied any effective relief. Under the statutory scheme of the Act, upon complaint to the Secretary of Labor with respect to any matter affecting nominations or eligibility requirements, the Secretary of Labor is authorized and directed by the Act to investigate and under appropriate circumstances to initiate an action in his official name in the District Court to vindicate the rights asserted and to seek an order setting aside an election and directing a new election be held under conditions consonant with the requirements of the Act.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioner,
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New York 4, N. Y.

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* In *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79, 82 (E. D. La. 1962), the Court stated:

> "Title I of the Act does not, of course, guarantee to any Union member the right to vote for a specific person, but guarantees him only the right to vote for a duly nominated and qualified candidate."

APPENDIX A

PUBLIC LAW 86-257

86TH CONGRESS, S. 1555

SEPTEMBER 14, 1959

AN ACT

• • •

SHORT TITLE:

SECTION 1. This Act may be cited as the "Labor-Management Reporting and Disclosure Act of 1959".

• • •

BILL OF RIGHTS

SEC. 101. (a)(1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

• • •

(4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not

to exceed a four-month lapse of time within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

• • •

SEC. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may brinf a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

• • •

SEC. 401(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or

be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and by-laws of such organization insofar as they are not inconsistent with the provisions of this title.

• • • •

ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil

action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

Appendix A

Application of Other Laws

Sec. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

APPENDIX B

Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 168—September Term, 1963

(Argued October 23, 1963 Decided November 7, 1963)

Docket No. 28445

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellants,

—v.—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,

Defendant-Appellee.

Before:

LUMBARD, *Chief Judge,*
MEDINA and FRIENDLY, *Circuit Judges.*

Appeal by members of a labor union from an order of the District Court for the Southern District of New York, Wilfred Feinberg, *Judge,* dismissing for want of jurisdiction a complaint alleging that the union had deprived plaintiffs of their equal right to nominate in violation of § 101 (a)(1) of the Labor-Management Reporting and Disclosure Act of 1959. Reversed.

Appendix B

BURTON H. HALL, New York, N. Y., *for Appellants.*
DAVID SCRIBNER (Pressman & Scribner, New York, N. Y.), *for Defendant-Appellee.*

FRIENDLY, *Circuit Judge*:

On August 12, 1963, plaintiffs, members of District No. 1, National Marine Engineers' Beneficial Association, a labor organization consisting of some 6000 marine engineers, instituted this action in the District Court for the Southern District of New York against the District Association, its President and its Secretary-Treasurer. The complaint asserted that the action was brought on behalf of plaintiffs and all other similarly situated members of the union to prevent the infringement of rights guaranteed by § 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (hereafter LMRDA), 29 U. S. C. § 411 (a)(1); the jurisdiction of the district court was laid under § 102. Believing that in fact the complaint alleged only a violation of § 401 of LMRDA, 29 U. S. C. § 481, and that the Act did not confer jurisdiction on a federal court to entertain a suit by union members to prevent a violation of that section, Judge Feinberg dismissed the complaint for want of federal jurisdiction. We think the complaint alleged a violation of § 101(a)(1) and that federal jurisdiction existed under § 102.

The complaint set forth that bylaws, imposed upon District No. 1 by a District Executive Committee composed of officials of its various locals, provide that the only candidate whom a member may nominate for any office is himself; that the practice of the District prohibits a member from nominating himself for more than one District office; that the national constitution of the union further restricts members' right to nominate by providing that no member other

than an incumbent official is eligible for nomination or election to a full-time elective office unless he has been a member for five years and has served 180 days or more of sea time on vessels covered by collective bargaining agreements with the national organization or its subsidiary bodies in each of two of the three years preceding nomination; and that the national constitution further provides that a candidate for the office of District President must have previously been elected and served as a full-time and paid official of an organization affiliated with the national body. The complaint prayed that an impending election under these provisions should be enjoined, as well as for other relief. An affidavit of plaintiff Harvey, submitted in support of a motion for a temporary injunction, enlarged upon the complaint by alleging that defendant was holding its first general election during the 90-day period beginning September 1, 1963; and that each plaintiff had been denied any right to nominate because he could nominate only himself but was ineligible for failure to meet the 180-day sea time requirement. Defendant's cross-motion to dismiss the complaint did not challenge plaintiffs' allegations but contended that these did not make out a case under § 101(a)(1) of LMRDA and that in any event the court was without jurisdiction.

Title I of LMRDA, "Bill of Rights of Members of Labor Organization," was added during the Senate's consideration of the Kennedy-Ervin bill, S. 1555, 86th Cong., 1st Sess. (1959), as reported by the Committee on Labor and Public Welfare. The initial proposal by Senator McClellan, adopted on April 22, 1959, see NLRB Legislative History of Labor-Management Reporting and Disclosure Act of 1959, 1102, 1119 (1959), was substantially amended in a form proposed by Senator Kuchel and passed by the Senate on April 25, *id.* at 1220, 1239 ff. The bill later passed by the House of Representatives and the statute as enacted

contained provisions similar to Senator Kuchel's amendment. For our purposes the vital ones are the portion of § 101(a)(1) which declares that "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization * * * " and § 102, which reads as follows:

> "Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

The Kennedy-Ervin bill had included a Title III—Elections which became Title IV of LMRDA. Section 401 contains a considerable number of substantive provisions. Among these are requirements concerning the frequency and manner of election of officers, distribution by the union of campaign literature at a candidate's request and nondiscrimination in the use of membership lists,[1] availability of such lists for inspection by a candidate, "adequate safeguards to insure a fair election * * * including the right of any candidate to have an observer at the polls and at the counting of the ballots," the notice of an election to be given to members etc. Most important here are the first and third sentences of § 401(e):

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[1] This requirement is made "enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office." § 401(c).

> "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * * Each member in good standing shall be entitled to one vote."

Section 401 is followed by § 402, entitled "Enforcement." This says, in relevant part, that a member of a labor organization who has exhausted union remedies or has failed to obtain a final decision within three months after invoking them "may file a complaint with the Secretary [of Labor] within one calendar month thereafter alleging the violation of any provision of section 401"; and that

> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe."

Appendix B

Section 403, headed "Application of Other Laws," provides

> "Sec. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

It is plain enough that § 401 covers a much wider territory with respect to union elections than the guarantees of equal rights and privileges to nominate and to vote contained in § 101(a)(1). Whereas § 101(a)(1) is directed solely to basic rights of members, § 401 deals both with rights of members, which it grants with far greater elaboration and specificity than the earlier section, and with rights of candidates.

It is not contended that the instant action, brought before the distribution of ballots had begun and for the purpose of enjoining an election under the allegedly illegal provisions of the District's bylaws and the national's constitution, encounters the bar of the last sentence of § 403, making a suit by the Secretary of Labor the exclusive remedy "for challenging an election already conducted • • • ".[2] Neither,

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[2] Counsel stipulated that the mailing of the ballots would not adversely affect or enlarge the rights and obligations of the parties. In any event, an election has not been "conducted" in our view at least until the time for balloting has expired. We are not called upon to consider whether if an appropriate action has been begun before an election is "conducted" but the election has not been enjoined, § 403 would require the court to stop in its track once the election was "conducted."

in the view we take of the case, need we consider the much mooted question whether the substantive provisions of § 401 (other than the provision noted in fn. 1) create claims enforceable by private pre-election suits in state or federal courts.[3] For we hold that the complaint alleged a violation of § 101(a)(1), and that the district court had jurisdiction under § 102 to remedy it.

If the union's constitution and bylaws had provided that only paid officials could make nominations for District President and that only incumbent officers or members with 180-day sea time in each of two of the three preceding years could make nominations for any other office, it could hardly be asserted that the members had "equal rights and privileges * * * to nominate candidates." Indeed, such a classification of union members would have been deemed invalid at common law, long before the LMRDA. See *Cameron* v. *International Alliance of Theatrical Stage Employees*, 118 N. J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935). Yet the combined effect of the eligibility requirements and the restriction to self-nomination is precisely that. With respect to the rules here in question, the statement of another district judge, relied on by the opinion below, that self-nomination "makes it as easy to be nominated as possible," is thus

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[3] The affirmative, as to most of the provisions, is argued in Summers, Preemption and the Labor Reform Act—Dual Rights and Remedies, 22 Ohio State L. J. 119, 135-140 (1961). A contrary view, at least as to federal jurisdictions, is taken in such cases as *Johnson* v. *San Diego Waiters Union*, 190 F. Supp. 444 (S. D. Calif. 1961), *Colpo* v. *Highway Truck Drivers*, 201 F. Supp. 307 (D. Del. 1961), vacated as moot, 305 F. 2d 362 (3 Cir.), cert. denied, 371 U. S. 890 (1962), and *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E. D. La. 1962). We have noted *Mamula* v. *United Steelworkers of America*, 304 F. 2d 108 (3 Cir.), cert. denied, 371 U. S. 823 (1962) and *Beckman* v. *Local No. 46 Int'l Ass'n of Bridge etc. Workers*, 314 F. 2d 848 (7 Cir. 1963), but find it unnecessary to express any opinion as to the conclusions reached on the facts there at issue.

too facile. We have no occasion now to consider whether such severe eligibility requirements as have here been imposed especially as to the District Presidency, or the self-nomination restriction, if either stood alone, would still infringe the guarantee of § 101(a)(1) to "equal rights and privileges * * * to nominate candidates" or would only raise a question of denial of "a reasonable opportunity * * * for the nomination of candidates" etc. under § 401(e). The fact that plaintiffs sought unsuccessfully to nominate themselves and in that sense are complaining also as candidates does not blot out the main thrust of their complaint—that the union has deprived members of the equal rights and privileges to nominate guaranteed by § 101(a)(1).

Whatever the right answer may be with respect to the permissibility of pre-election suits to enforce rights granted only by § 401, we see no reason to think that the assurance of "a reasonable opportunity * * * for the nomination of candidates" given by § 401(e), and its consequent overlap with § 101(a)(1), should be considered to have withdrawn jurisdiction granted by § 102 in a case not affected by the exclusive "post-election" provision of § 403. The Senate superimposed Title I on the Kennedy-Ervin bill because it was not satisfied that the latter, including the provisions now contained in Title IV, went far enough in protecting basic rights of union members. It agreed with Senator McClellan's position that the bill should define fundamental rights of union members "just as the rights of the American people are set forth in the Bill of Rights of the Constitution of the United States," Legislative History, 1104, and overrode Senator Kennedy's initial objection that union members were better protected "by present State law, by the provisions of the bill, and by the Taft-Hartley Act." Legislative History, 1108.[4] Moreover, whereas the Mc-

[4] Senator Kennedy in no way opposed the substance of the Bill of Rights proposed by Senator McClellan but feared that it might

Clellan amendment had provided for civil enforcement of the Bill of Rights through suit by the Secretary of Labor (see § 103 of the amendment, Legislative History, 1102), the Kuchel amendment substituted the private suit now embodied in § 102, this being described as "one of the major changes in the proposal." Legislative History, 1232.

The District Court thus erred in dismissing the complaint for want of jurisdiction.[5] The plaintiffs' right to a temporary injunction against the holding of the election under the present constitution and bylaws is plain, and such an injunction should issue promptly. The district court should also require the union to submit new provisions as to the right to nominate that will meet the mandate of § 101(a)(1). See *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 552-53 (1937); *Brown* v. *Board of Education*, 349 U. S. 294, 300 (1955).

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion. The mandate will issue forthwith.

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eliminate protection afforded by state law without creating a satisfactory alternative. Although he voted against the McClellan amendment, Legislative History, 1119, his objections apparently were met by the anti-preemption language in § 103 of Senator Kuchel's substitute, Legislative History, 1221, and he voted for Title I in that form, Legislative History, 1239.

[5] We have not overlooked an argument that the first sentence of § 403 protects a union against being required to conduct an election "in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title," and that plaintiffs must thus rely on § 401(e) rather than on § 101(a)(1) in order to win, since § 101(a)(1) is not in "this title." We do not think the statute should be read so literally, particularly in view of the legislative history summarized above, and therefore need not consider an alternative argument that in a suit based on § 101(a)(1) a plaintiff can avail himself of § 401(e) as a replication to a defense based on § 403 even if § 402 is the exclusive remedy for affirmatively enforcing Title IV rights (other than those noted in fn. 1). Compare *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U. S. 667, 672 (1950).

Appendix B

Judgment of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventh day of November, one thousand nine hundred and sixty-three.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,
HON. HAROLD R. MEDINA,
HON. HENRY J. FRIENDLY,
Circuit Judges.

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETA, each of them individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellants,

v.

JESSES M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is revised and that the action be and it hereby is remanded for further proceedings consistent with the opinion of this court with costs to the appellants.

A. DANIEL FUSARO,
Clerk.

Appendix B

Opinion of District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Plaintiffs,

against

JESSES M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO,

Defendant.

BURTON H. HALL, ESQ., of New York, N. Y.
Attorney for Plaintiffs.

PRESSMAN & SCRIBNER, ESQS., of New York, N. Y.
Attorney for Defendant,
DAVID SCRIBNER, ESQ., of Counsel.

FEINBERG, *D. J.*

This is a motion for a preliminary injunction brought by three members of District No. 1, National Marine Engineers Beneficial Association ("District No. 1"), on behalf of themselves and others similarly situated, against District No. 1, its President or Secretary-Treasurer. The complaint alleges jurisdiction under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "Act"),[1] 29 U. S. C. § 412. Plaintiffs ask this Court to enjoin District No. 1 from holding a general election of

[1] Commonly known as the "Landrum-Griffin Act."

local union officers on the ground that plaintiffs' rights to nominate candidates, as secured to them under Section 101 (a) (1) of the Act, 29 U. S. C. § 411 (a) (1), have been infringed. Plaintiffs also allege that defendant District No. 1 has failed to appoint an impartial administrator to supervise the forthcoming election, and claim that this failure not only violates their rights to vote under Section 101 (a) (1) of the Act, 29 U. S. C. § 411 (a) (1), but also contravenes a provision of the District's bylaws which requires designation of an impartial administrator. Defendant has filed a cross-motion to dismiss the complaint on the grounds that this Court lacks jurisdiction over the subject matter, and that the complaint fails to state a claim upon which relief can be granted.

The important facts are not in dispute, and, as they appear from the affidavits filed by both parties, may be summarized as follows: the National Marine Engineers Beneficial Association ("NMEBA"), a national affiliate of the AFL-CIO, represents over ninety per cent of the licensed marine engineers in the United States. It is now composed of various district organizations; District No. 1, of which plaintiffs are members in good standing, has over 6,000 members. The District will hold a general election during the ninety-day period commencing September 1, 1963, and it is this election which plaintiffs seek to enjoin. Counsel have stipulated that the mailing of ballots would not of itself adversely affect or enlarge the rights and obligations of the parties to the proceeding.

Prior to January 1, 1961, NMEBA was composed of various "locals." At that time, a member could nominate any other member for local office, subject to certain eligibility requirements. On January 1, 1961, NMEBA was reorganized on a "district" basis, and thereafter certain changes, of which plaintiffs complain, were made in nomination procedures and eligibility requirements for officers.

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(1) Members of District No. 1 are confined to self nomination. Article X of the bylaws of District No. 1 provides:

> "Elections for District-wide Offices
>
> "Section 1. Nominations. Any member may submit his name for nomination for the offices of District President, District Vice President, Branch Agent, Patrolman • • • or Representative to the National Convention by delivery in person or sending by registered mail, a letter addressed to the Credentials Committee"[2]

(2) In March 1963, the national constitution of NMEBA was amended to provide that only those non-officer members who have served 180 days or more of sea time on NMEBA-contracted vessels in two of the previous three years are eligible for nomination, that no member may be a candidate for District President unless he is a full time paid official of the union, and that no member may run for District office unless he has been a member of NMEBA for five years. Article X, Section 9 of the Constitution of NMEBA provides:

> "Any member shall be eligible for nomination to and election as a full time and paid elective office of a District provided he is at the time of nomination and election a member of good standing and (a) has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of closing of nominations; and (b) has been a member of the District and/or predecessor Subordinate Association for 2 years immediately preceding said date; and (c) has had either

[2] See Exhibit "A" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

180 days of employment on vessels covered by collective bargaining agreements with the Union during each of any 2 full calendar years of the 3 calendar years immediately preceding the closing date of nominations, or equal time served as full time and paid elected or appointed official of the National Association or of a Subordinate Association or the District or of any other organization which has duly affiliated with the National Association.

"A candidate for District President, in addition to the qualifications specified above, must have previously been elected and served as a full time and paid official of a Subordinate Association, District or of any organization which has duly affiliated with the National Association."[3]

(3) Under a ruling of the Credentials Committee of District No. 1, members are prohibited from nominating themselves to more than one office.

Plaintiffs contend that the above bylaw, constitutional amendment and ruling by the Credentials Committee unreasonably deprive members of District No. 1 of their right to nominate candidates as guaranteed to them under Section 101 (a) (1) of the Act, 29 U. S. C. § 411 (a) (1). Defendant contends that this Court is without jurisdiction to entertain this motion, that plaintiffs have made no showing warranting the relief sought, that plaintiffs have failed to exhaust their intra-union remedies, and that, in any event, plaintiffs have been guilty of laches.

Consideration of defendant's jurisidictional argument requires an examination of the Labor-Management Reporting and Disclosure Act of 1959, a comprehensive statute which protects the rights of union members through various

[3] See Exhibit "C" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

remedies. Title I of the Act is entitled "Bill of Rights of Members of Labor Organizations." Contained within Title I is Section 101 (a) (1), 29 U.S. C. § 411 (a) (1), which provides:

> "Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization *to nominate candidates,* to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, *subject to reasonable rules and regulations in such organization's constitution and by-laws.*" (Emphasis added.)

A procedure to enforce these rights is provided in Section 102 of the Act, 29 U. S. C. § 412. This section permits any person, whose rights under Title I have been infringed, to bring a civil action in a Federal District Court for appropriate relief.

Title IV of the Act is entitled "Elections" and subtitled "Terms of office; election procedures." This Title includes Section 401 (e) of the Act, 29 U. S. C. § 481 (e), which states:

> "In any election required by this section which is to be held by secret ballot *a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed)* and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." (Emphasis added.)

The remedy for a violation of Section 401(e) of the Act, 29 U. S. C. § 481 (e), is specifically set forth in Section 402

of the Act, 29 U. S. C. § 482. Section 402, in substance, provides a post-election remedy whereby complaint is made to the Secretary of Labor who institutes a civil action if he finds upon investigation that there is probable cause. That section states:

> "(a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
>
> (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.
>
> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter

> and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

Thus, the structure of the Act clearly differentiates between violations of Title I and Title IV, and different remedies are provided for each.

Defendant's jurisdictional attack is based on two premises: this Court has no pre-election jurisdiction over Title IV violations, and plaintiffs' complaint alleges, in fact, only such violations, although jurisdiction is stated in terms of Title I.

On the first point, the cases indicate that defendant is correct and that the only remedy for violations of Title IV is the post-election procedure initiated by a complaint to the Secretary of Labor. This was the conclusion reached by Judge Wyatt of this Court in *Jackson* v. *NMEBA*[4] decided only a few weeks ago. That case involved an attack on two of the rules complained of by plaintiffs here (the self-nomination requirement and the requirement of previous service as a full time paid elected official). In the course of denying relief to plaintiffs, the Court stated.[5]

> "It is the eligibility requirements which plaintiff attacks and these are *exclusively* dealt with by Section 401 (e) [of Title IV]. Where a particular subject is dealt with by a section of the Act—for example, the eligibility of candidates in Section 401 (i)—it must be assumed that Congress intended the specific provisions to govern and not the general provisions of Section 101 (a) [of Title I]."

Other cases support the proposition that the Federal District Courts do not have jurisdiction for violations of

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[4] 63 Civ. 2226, S. D. N. Y., August 16, 1963.

[5] *Id.* at 5.

Title IV, except in accordance with the procedure set up in the statute which calls, in the first instance, for an investigation by the Secretary of Labor. See *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (3 Cir.), *cert. denied*, 371 U. S. 823 (1962); *Colpo* v. *Highway Truck Drivers and Helpers*, 201 F. Supp. 307 (D. Del. 1961), *vacated as moot*, 305 F. 2d 362 (3 Cir.) *cert. denied*, 371 U. S. 890 (1962); *cf. Hamilton* v. *Guinan*, 199 F. Supp. 562 (S. D. N. Y. 1961); *Acovedo* v. *Bookbinders and Machine Operators*, 196 F. Supp. 308 (S. D. N. Y. 1961). Although a contrary view has been advanced,[6] it appears that the authority is the other way.

Plaintiffs appear to recognize the force of this authority, because they emphasize that complaint is made only of alleged violations of Title I. Each of the rules they attack, according to plaintiffs, interferes with the right to nominate as guaranteed them by Section 101 (a) (1) of the Act quoted above. Plaintiffs contend, for example, that they may challenge under Title I the reasonableness of the requirement of sea time because they have a right to nominate someone who has not had sea time. However, the requirement of sea time is clearly a "qualification" on candidacy dealt with by Title IV. It is true that a requirement of sea time, as a prerequisite to candidacy, limits the number of people plaintiffs can nominate. However, it is hard to imagine any rule or requirement on candidacy, no matter how reasonable, which would not similarly limit the number of people plaintiffs might nominate. If plaintiffs' argument were accepted, every eligibility requirement for office would fall within Title I. However, the structure of the Act is clearly different. The reasonableness of the sea time requirement, therefore, must be tested in accordance with the procedures set

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[6] See Summers, *Pre-Emption and the Labor Reform Act—Dual Rights and Remedies*, 22 Ohio St. L. J. 119, 135-140 (1961); *American Bar Ass'n, Labor Relations Law*, 1962 Proceedings, at 74-76.

forth for violations of Title IV and not through the procedures under Title I.

A similar point in an analogous situation was made recently in *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E. D. La. 1962), where plaintiffs complained of the disqualification of a candidate for whom they wanted to vote. The Court refused an injunction and pointed out as follows (212 F. Supp. at 82):

> "In the present case, there can be no question but what the complainants herein were not deprived of the right to nominate, nor were they deprived of the right to vote. *Title I of the Act does not, of course, guarantee to any union member the right to vote for a specific person, but guarantees him only the right to vote for a duly nominated and qualified candidate.* The pleadings, on their face, affirmatively show that the complainants herein did, in fact, nominate the candidates of their choice. It was subsequent to the nomination, and during the process of certifying candidates as to their qualifications, that the present dispute actually arose. Whether or not the disqualification of the candidates in question was proper is a matter to be resolved in accordance with the provisions of Title IV of the Act. Title IV deals comprehensively with the procedure for nominating and electing officials. It provides that reasonable opportunities must be given members to nominate, and that every member in good standing shall be eligible to be a candidate and to hold office subject to, or course [sic], reasonable rules and regulations of the union. Title IV further specifically sets forth in 29 U. S. C. A. § 482 that violation of the provisions outlined therein can only be enforced by the Secretary of Labor once an election is held." (Emphasis added.)

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All of the matters complained of by plaintiffs appear to be qualifications on eligibility for candidacy and, therefore, their reasonableness or lack of reasonableness will have to be tested in accordance with Title IV procedures. This is certainly true not only of the sea time requirement, but also of the requirements of five year prior membership in the union in order to run for office, limitation to candidacy for only one office, and the necessity of being a full time paid prior official in order to run for union president. It may be possible to view the self-nomination requirement as a Title I problem rather than a Title IV problem, but even if it is, the requirement seems reasonable. This certainly was the Court's view in *Jackson* v. *NMEBA, supra*, when it stated that such a provision "makes it as easy to be nominated as possible." *Id.* at 5. Defendant points out that a union meeting or conference to place his name in nomination under this provision, a member does not even have to attend tion, but can write a letter to the union from any port in any part of the world declaring his candidacy. While the new provision does have a limiting effect in some ways, the argument that it is, on the whole, reasonable is persuasive.

Therefore, with regard to all of the complaints on eligibility and nomination procedure, it appears that this Court is without jurisdiction to consider them or in the case of the self-nomination procedure, the complaint is not well-founded. The cases relied on by plaintiffs do not compel a contrary view. *Mayfield* v. *Babcock*, 47 CCH Lab. L. Rep. ¶ 18,375 (E. D. N. Y. 1963), did not deal with a title IV violation, but with a Title I violation involving an allegation that a member's right to vote in secret was lost. Similarly, *Boggia* v. *Hoffa*[7] dealt with eligibility of members to vote, also clearly a Title I problem.

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[7] 41 CCH Lab. L. Rep. ¶ 16,731 (E. D. N. Y.), *modified*, 41 CCH Lab. L. Rep. ¶ 16,732 (2 Cir. 1960), *motion to certify result of election granted*, 41 CCH Lab. L. Rep. ¶ 16,733 (E. D. N. Y. 1962).

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With regard to plaintiffs' claim that an impartial administrator has not been designated in accordance with the District's bylaws, the answering affidavit of defendant makes clear that an impartial administrator has, in fact, been designated.[8] Since this is not seriously in dispute, the Court will not consider the claim further at this time.

On the entire record, I do not feel that plaintiffs have shown by clear and convincing facts that they have a reasonable probability of success in final hearing on this matter. Because of the disposition on defendant's main point, it is unnecessary to consider its other arguments, such as failure to exhaust intra-union remedies and laches.

The foregoing shall constitute findings of fact and conclusions of law in accordance with Fed. R. Civ. P. 52 (a). The motion to dismiss is granted and the application for a preliminary injunction is denied. Submit order on notice.

Dated: New York, N. Y.
August 31, 1963.

/s/ WILFRED FEINBERG,
U. S. D. J.

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[8] Affidavit of Jesse S. Calhoon in Opposition to Application for Preliminary Injunction, pp. 1-3.

APPENDIX C

NICHOLAS MAMULA

v.

UNITED STEELWORKERS OF AMERICA, an Unincorporated Labor Union, and I. W. ABEL, International Secretary-Treasurer Thereof, Appellants.

No. 13782.

UNITED STATES COURT OF APPEALS

THIRD CIRCUIT

Argued March 9, 1962.

Decided June 5, 1962.

304 F. 2d 108

Before KALODNER, STALEY and HASTIE, Circuit Judges.

STALEY, Circuit Judge.

The plaintiff, Nicholas Mamula, commenced this action under the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U. S. C. A. § 401 et seq., alleging that certain of the rights guaranteed to him thereunder were violated by defendants, United Steelworkers of America, AFL-CIO ("union"), and its Secretary-Treasurer, I. W. Abel. At all times relevant, plaintiff was president of Local Union 1211 of District 20 of the union. The union is divided into a number of geographically defined "districts". Its constitution provides that each local shall have the right to nominate a candidate for district director, and nomination by any five locals within a district shall

entitle the nominee to be placed on the district ballot. The union's constitution, however, does not prescribe the procedure for selecting nominees. This is left to the locals.

Nomination meetings were held by locals in District 20 in November and December of 1960. Plaintiff's name was not placed on the ballot for district director, although by letter his counsel requested the union to do so. Attached to the letter were affidavits executed by members of six different locals within District 20. Each one indicated that plaintiff's name had been placed in nomination for district director at each of the respective local's nomination meeting. The record showed, however, that plaintiff was defeated. Before the actual election for district director was held, plaintiff filed a complaint in the district court, alleging that defendants had denied him an opportunity to submit his name for candidacy to the membership and that the union's constitution and by-laws fail to prescribe procedures to be followed in selecting a nominee. This, he said, constituted a violation of Title I, §§ 101(a)(1)(2)(4) and 102, 29 U. S. C. A. §§ 411(a)(1)(2)(4) and 412 of the LMRDA, and requested a temporary injunction or restraining order enjoining the election of a district director, and that the court direct the union to place his name on the district ballot. The district court denied the request, and the election was held. The matter came on for full hearing, and thereafter the district court entered an order setting the election aside, under Title I, § 101(a)(1) of the LMRDA, 29 U. S. C. A. § 411(a)(1).[1] It is from this order that

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[1] Section 101 in pertinent part reads as follows:

"(a) (1) Equal rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws." 29 U. S. C. A. § 411(a)(1).

defendants have appealed. More particularly, the district court found that the union's constitution was "lacking and deficient in failing to set forth nominating procedures for its International officers in order that members rights under Section 101 will be protected." Some of the particular inadequacies listed by the district court were that the union hall, where voting was conducted, had a capacity of 600, while Local 1211 had a membership in excess of 11,000. Further, that the nomination and voting took place at one meeting, although at the time set for the meeting one-third of the membership was at work and unable to attend.

[1] The defendants first contend that Title IV, §§ 401-403 of the LMRDA, 29 U. S. C. A. §§ 481-483, and not Title I, governs the procedures for nominating and electing officers and sets forth exclusive remedies for violation of these procedures, and that under Title IV the plaintiff lacks standing to bring this action. A reading of Titles I and IV in conjunction with the legislative history of the LMRDA, and consideration of the pertinent decisions that have been rendered, compel us to conclude that this contention is correct.

[2] Title I guarantees union members an equal opportunity to vote, while Title IV prescribes the procedures that are to be followed in nominating and electing union officers. It also, just as clearly, prescribes the remedies available to a union member where these procedures are not followed. The present Title I was not in the LMRDA when it left Committee.[2] Title I, frequently referred to as the bill of rights section, was introduced as an amendment to the LMRDA by Senator McClellan who, during debate, referred to § 101(a)(1), saying:

> "The select committee found time and again the denial of the right to vote, the denial of the right

[2] S. 1555, 80th Cong. 1st Sess. 1959.

to work, the denial of the right to have a voice, the denial of the basic human rights on which our very freedom was founded."[3]

The desire to protect the fundamental right of a union member to vote was again apparent when Senator McClellan told the Senate:

"• • • [O]bviously give the union members some rights in the bill, because we insert in the bill a criminal penalty in the case of those who violate the rights given the union members. I simply propose that we define and describe those rights, which are basic, and which every citizen of the country is entitled to. I believe we should elucidate on this point."[4]

Earlier he referred to it in debate and said:

"If this bill should be enacted into law, it would bring to the conduct of union affairs and to union members the reality of some of the freedoms from oppression that we enjoy as citizens by virtue of the Constitution of the United States, which incidentally does not make an exception for union members."[5]

Before he offered the amendment containing the bill of rights section, Senator McClellan introduced S. 1137.[6] The proposed bill contained a bill of rights provision which expressly directed that nominations and elections be conducted in accordance with section 302 thereof. That section, in turn, was in substance similar to the provisions of Title IV of the LMRDA.

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[3] 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1103. U. S. Govt. Printing Office, 1939.

[4] *Id.* at p. 1106.

[5] *Id.* at p. 1098.

[6] S. 1137, 86th Cong. 1st Sess. 1959.

Appendix C

On February 6, 1959, Senator Mundt introduced S. 1002, which was directed specifically at providing democratic procedure in the election of officers. That bill contained detailed provisions dealing with union nominations and elections, and was considered by the Senate side by side with the McClellan bill of rights amendment, and was not viewed as being incompatible with it. The Mundt bill did not pass the Senate. Thereafter, the McClellan amendment was replaced by the so-called Kuchel substitute that passed the Senate.[7] Debate on the substitute made it clear that it was in the main a reenactment of the McClellan amendment, which is now Title I.[8]

Title IV, on the other hand, deals comprehensively with the procedure for nominating and electing union officials. It would be inappropirate to set it out in extenso here, so we shall summarize its provisions. Section 401 prescribes the frequency of elections for certain enumerated officers, distinguishing between local and international officers, and requires use of a secret ballot. It goes on to require that balloting shall be by members in good standing or at a convention of delegates selected by ballot.[9] Further, a union is under a duty to comply with all reasonable requests by candidates for union office to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Also, every bona fide candidate has the right, which he can exercise once within a 30-day period prior to an election of a labor organization in which he is a candidate, to inspect

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[7] 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1259.

[8] *Id.* at pp. 1229-1239.

[9] 29 U. S. C. A. § 481(a) & (b).

a list containing the names and last known addresses of all members of the labor organization. The union is under an obligation to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of ballots.[10] Reasonable opportunities must be given members to nominate, and every member in good standing shall be eligible to be a candidate and to hold office, and shall have the right to vote for or otherwise support the candidate or candidates of his choice without being subject to penalty or discipline. Every member is entitled to advance notice of an election. Detailed procedures are provided for retaining ballots and other records, and the election must be conducted in accordance with the by-laws and constitution of the union, except to the extent that they are inconsistent with Title IV.[11] The credentials of delegates to a convention that elects officers, as well as the minutes of the convention and other records of the convention pertaining to the election of officers, shall be retained for one year.[12] The items for which union funds may be spent in union elections is limited to providing notices and factual statements of issues not involving candidates and other expenses necessary for the holding of an election. Title IV further specifically sets forth in § 402, 29 U. S. C. A. § 482, that violations of the provisions outlined above can only be enforced by the Secretary of Labor once an election is held. The pertinent parts of the provisions read this way:

> "A member of a labor organization—
>
> "(1) who has exhausted the remedies available under the constitution and by-laws of such organization and of any parent body, or

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[10] *Id.* at § 481(c).
[11] *Id.* at § 481(e).
[12] *Id.* at § 481(f).

> "(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violat n of the constitution and by-laws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide." 29 U. S. C. A. § 482(a).

Subsection (b) requires the Secretary of Labor to investigate complaints and to commence an action in an appropriate federal court to set aside any election where he has reason to believe that Title IV has been violated. The court has power to set aside the election and direct that a new one be held under supervision of the Secretary of Labor. The Secretary, after conducting the election, must certify to the court the names of persons elected and the court shall then enter a decree declaring that such persons have been elected. If the proceeding is for the removal of officers, the Secretary must certify the election results and the court shall enter an appropriate decree declaring whether such officers have been removed.[13] Title IV goes on in § 403, 29 U. S. C. A. § 483, to provide that: "The remedy provided by this title for challenging an election already conducted shall be exclusive." Furthermore, where an individual union member has standing to bring suit under Title IV, Congress clearly so indicated. Section 401(c) guarantees candidates for union office the right to

[13] *Id.* at § 482(c).

inspect certain union membership lists, and upon failure of union officials to make such lists available, any bona fide candidate has standing to bring suit in a district court of the United States.

The bill introduced by Senator Kennedy, and known as the Kennedy-Ervin bill, contained the present remedy.[14] The committee report accompanying the bill categorically stated that post election actions to enforce the nomination and election provisions could only be initiated in the courts by the Secretary of Labor.[15] At the same time that the Kennedy-Ervin bill was under consideration, an administration bill was introduced.[16] That bill expressly provided for enforcement by both the Secretary and individual union members. The Kennedy-Ervin bill, and not the administration bill, was passed by the Senate. When the LMRDA reached the House, Title IV was changed to include a provision that read as follows:

> "§ 402(a). A member of a labor organization—
>
> "(1) who is aggrieved by any violation of section 401, and
>
> "(2) who (A) has exhausted the reasonable remedies available under the constitution and bylaws of such organization and of any national or international labor organization with which such organization is affiliated, or (B) has diligently pursued such available remedies without receiving a final decision within six calendar months after their being invoked, may bring a civil action against such labor

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[14] S. 1555, 86th Cong. 1st Sess. 1959.

[15] S. Rep. No. 187, 1 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pp. 397, 417, U. S. Code Cong. & Adm.-News 1959, p. 2318 *et seq.*

[16] S. 748, 86th Cong., 1st Sess. 1959.

organization in any district court of the United States * * *"[17]

That provision was removed, however, by the conference committee, prompting Senator Kennedy to say, while reporting back to the Senate:

> "The provisions requiring fair and periodic elections are taken from the Senate bill. The Landrum-Griffin bill would have substituted a variety of suits by individual union members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored".[18]

Several recent district court decisions that have discussed the interplay between Titles I and IV, and the plaintiff's standing to bring this action, are in accord with our conclusion. They are Colpo v. Highway Truck Drivers and Helpers, Local 107, 201 F. Supp. 307 (D. Del. 1961); Gammon v. International Ass'n of Machinists, 199 F. Supp. 433 (N. D. Ga. 1961); Acevedo v. Bookbinders and Machine Operators Local 25, 196 F. Supp. 308 (S. D. N. Y. 1961); Johnson v. San Diego Waiters & Bartenders Union Local 500, 190 F. Supp. 444 (S. D. Calif. 1961); Myers v. International Union of Operating Engineers, 40 CCH Labor Cases ¶ 66,436 (E. D. Mich. 1960); Byrd v. Archer, 38 CCH Labor Cases ¶ 66,083, (S. D. Calif. 1959).[19]

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[17] 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1697.

[18] *Id.* at p. 1433.

[19] The Commissioner of the Bureau of Labor-Management Reports of the Department of Labor in a letter to plaintiff's counsel said:

> "While individual union members may have the right under state law to bring a private action to enforce the constitution

[Continued on page 48]

[3] Even if this were an action within the ambit of § 101(a)(1) of Title I, 29 U. S. C. A. § 411(a)(1), it is clear that the plaintiff lacks standing to bring it. The enforcement provision for Title I is § 102, 29 U. S. C. A. § 412, which provides that: "Any person whose rights secured by the provisions of this title have been infringed * * * may bring a civil action in the district court of the United States for * * * relief * * *." There is nothing in the record showing any of plaintiff's rights as a union member set forth in Title I were violated by defendants. The facts point, the other way, for he participated in the meeting, was its presiding officer, and had ample opportunity to nominate candidates. There is nothing in the provisions of Title I or its legislative history [20] that would give plaintiff standing as a candidate to bring this action. That is borne out by the district courts that have considered the question. Gammon v. International Ass'n of Machinists, supra; Johnson v. San Diego Waiters Union Local 500,

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[Continued from page 47]

and bylaws of the organization with respect to elections prior to the conduct thereof, once the election has been held the remedy provided by Section 402 becomes exclusive to the extent that such members' action challenges the conduct of the election. * * * After the election has been held, the member would have to follow the procedures prescribed by Section 402 i.e. he must first invoke the remedies available under the organization's constitution and bylaws and if he fails to obtain satisfaction within the union he may then complain to the Secretary within the time prescribed by 402(a). * * * But the Secretary cannot proceed with any investigation of the election under Section 402 until such time as your clients see fit to file complaints with him which meet the conditions set forth in Section 402(a) of the Act."

[20] The legislative history on the point can be found in 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pp. 1232-1233; 105 Cong. Rec. 10085 (86th Cong., 1st Sess. 1959).

supra; Byrd v. Acher, supra. Furthermore, plaintiff does not have standing to enforce the right of other union members. Johnson v. Stevenson, 170 F. 2d 108 (C. A. 5, 1948), cert. denied, 336 U. S. 904, 69 S. Ct. 491, 93 L. Ed. 1069 (1949). On frequent occasions, the Supreme Court has held that an individual does not have standing to litigate the rights of another. E. g., McGowan v. Maryland, 366 U. S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961); Cronin v. Adams, 192 U. S. 108, 24 S. Ct. 219, 48 L. Ed. 365 (1904).

The judgment of the district court will be reversed and the cause remanded with directions that the complaint be dismissed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 17

JESSE M. CALHOON, as President, and HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

—against—

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 688

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

—against—

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the Court of Appeals for the Second Circuit (Rec. 56-65; Petition, pp. 18-26) is not yet officially reported. The opinion of the District Court for the Southern District of New York (Petition, pp. 28-38) is reported at 221 F. Supp. 545.

Jurisdiction

The jurisdictional requirements are adequately set forth in the petition.

Statute Involved

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401 *et seq.*) are set forth in the Petition at pp. 13-17.

Question Presented

Whether a district court has jurisdiction, under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959, over a suit brought by union members to protect the rights guaranteed to them by Section 101(a)(1) of that Act to nominate candidates in their union's elections, from infringement in the form of eligibility and nomination requirements which limit the right of nomination to a minority of the union's members.

Statement

Petitioner seeks review of a (non-final) order of the Court of Appeals for the Second Circuit which reversed the District Court's dismissal of the complaint herein and remanded the cause for further proceedings (Rec. 64; Petition, p. 26). Suit was brought under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA") by respondent union members, claiming infringement of rights guaranteed them by Title I of the LMRDA. The Court of Appeals held that the District Court had jurisdiction over the suit under Section 102.

Respondents' rights as members of petitioner local labor organization to nominate candidates in petitioner's elections have been infringed by a "spider's web" of by-law and con-

stitutional provisions which, in sum, prohibit them and most other members of petitioner from nominating *any* candidate for any union office whatever. This "spider's web" is made up of a provision forbidding members to nominate any candidate other than themselves, together with eligibility requirements so severe as to render the majority of petitioner's members (respondents included) ineligible for union office (Rec. 3-5, 8, 14-15; Petition, pp. 19-20, 24). Respondents are thus prohibited both from nominating others and from nominating themselves.

Having no intra-union recourse against the former prohibition, respondents attempted unsuccessfully to challenge the latter one by submitting their own names in nomination and appealing from their disqualification. After thus exhausting their intra-union remedies, they brought suit under Section 102 of the LMRDA to enjoin the infringement of their right to nominate candidates, which right is guaranteed to every union member by Section 101(a)(1) of the LMRDA. They did not seek to be recognized as candidates themselves or to have their names placed on the ballot; rather it was their right to nominate candidates which formed (and forms) the basis of their claim for relief (Rec. 3-6, 11, 14-16; and cf. Petition, p. 25).

Suit was commenced in August, 1963, before the ballots to be used in petitioner's scheduled 1963 election (the first general election ever scheduled to be held by petitioner) were even printed. The 1963 election has still not been held: in fact, petitioner has held only one election in its entire history, and that one was a special by-election to fill two minor vacancies on its District Executive Board (Rec. 5). All incumbent officials other than the holders of these two minor offices have been appointed rather than elected to office.

From dismissal of their complaint for want of jurisdiction, and from consequent denial of their motion for a preliminary injunction, respondents appealed. The Court of

Appeals reversed the dismissal of the complaint and remanded the cause for further proceedings below, observing that any union constitutional or by-law provision limiting nomination rights as sharply as petitioner's do "would have been deemed invalid at common-law, long before the LMRDA" (Rec. 62; Petition, p. 24).

Argument

The petition is grounded upon petitioner's contention that the intent and purpose which Congress unequivocally expressed in Section 102 of the LMRDA (which section permits union members to bring suit to protect the rights guaranteed them by Title I) is "irrational" (Petition, p. 10). Petitioner tells the Court that its (petitioner's) own view of what Congress *should* have intended is more "rational" and thus more worthy of being effectuated (Petition, p. 9).

But petitioner is mistaken. Its contention, not Congress's, is "irrational."

In adding Title I—the "Bill of Rights of Members of Labor Organizations"—to the LMRDA, Congress guaranteed certain specified democratic rights to union members and expressly authorized union members to bring suit in federal district court to protect those rights against infringement. Among these specified rights is the right to nominate candidates in union elections. Although other methods of protecting these rights were discussed, Congress wisely concluded by providing for private suits to be brought by the union members themselves.

It is that provision for private suits that petitioner now says is "irrational." Petitioner would prefer to have the protection of union members' rights left to the Secretary of Labor, whose authority is limited to challenging the results of union elections after they have been conducted and completed. Petitioner asks this Court to repeal Congress's

clearly-expressed purpose and to re-write the LMRDA to fit its (petitioner's) views. But it has come to the wrong door. If petitioner dislikes what Congress did, it should take its objections to Congress—not to this Court.

1. *The Decision of the Court of Appeals is Clearly Correct.*

Petitioner builds its "irrationality" argument out of the fact that another title of the LMRDA, Title IV, empowers the Secretary of Labor, in certain instances, to bring suit after a union election has been completed in order to set aside the results of that election. Petitioner contends that this is adequate protection for union members' democratic rights and that Congress was "irrational" in adding Title I to the LMRDA.

The relevant provisions of Title IV were already present in the original Kennedy-Ervin bill as it was reported to the Senate in March, 1959; they comprised what was then Title III of the bill. If Congress had believed that these provisions provided adequate protection for the democratic rights of union members it would not have added Title I, the "Bill of Rights" title, to the LMRDA. But it did not believe that these provisions provided adequate protection so, upon Senator McClellan's urging that it give to union members "the tools they can use themselves" to reform and democratize their unions, 105 Congressional Record 6467; NLRB, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, 1103, it added a "Bill of Rights of Members of Labor Organizations" to the Kennedy-Ervin bill as Title I thereof.

As the Court of Appeals pointed out below (Rec. 63-64; Petition, pp. 25-26):

> "The Senate superimposed Title I on the Kennedy-Ervin bill because it was not satisfied that the latter, including the provisions now contained in Title IV, went far enough in protecting the basic rights of

union members. It agreed with Senator McClellan's position that the bill should define fundamental rights of union members 'just as the rights of the American people are set forth in the Bill of Rights of the Constitution of the United States,' Legislative History, 1104, and overrode Senator Kennedy's initial objection that union members were better protected 'by present State law, by the provisions of the bill, and by the Taft-Hartley Act.' Legislative History, 1108. Moreover, whereas the McClellan amendment had provided for civil enforcement of the Bill of Rights by the Secretary of Labor (see § 103 of the amendment, Legislative History, 1102), the Kuchel amendment substituted the private suit now embodied in § 102, this being described as 'one of the major changes in the proposal.' Legislative History, 1232."

The scheme which Congress adopted in the "Bill of Rights" title is simple. Section 101(a)(1) provides, in relevant part:

> "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, [and] to vote in elections or referendums of the labor organizations, * * *."

Section 102 provides for civil enforcement of these rights as follows:

> "Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. * * *"

This scheme is thus clear and self-consistent; there is nothing "irrational" about it. Any union member whose Section 101(a)(1) rights have been infringed is entitled,

by the provisions of Section 102, to bring suit for injunctive and other appropriate relief. Cf. *Beckman* v. *Local No. 46* (7th Cir. 1963), 314 F. 2d 848. Surely, this scheme is more "rational" than requiring union members to wait until *after* the election has been completed to complain of the deprivation of their democratic rights.

Indeed, the only "irrationality" here lies in petitioner's displeasure with Congress's purpose. This Court has often emphasized the desirability of allowing private suits to protect valuable rights, even though an administrative agency may be charged with responsibilities in the area; cf. *Smith* v. *Evening News Association* (1962), 371 U. S. 195. In this area, where the Secretary of Labor's authority is limited to *post*-election challenges, it was the mark of sound Congressional wisdom to provide for private suits for the protection of democratic rights in advance of union elections. It is petitioner's attempt to prohibit such suits that is truly "irrational."

2. *There is No Conflict of Decision.*

By blurring the distinction between two disparate rights (between the right *to nominate* a candidate and the right *to be* one), petitioner attempts to claim a conflict between the decision below and that of the Third Circuit in *Mamula* v. *United Steelworkers* (1962), 304 F. 2d 108 (Petition, pp. 39-49). But petitioner neglects to mention that the *Mamula* case, *supra*, (unlike the present one) was brought by a candidate seeking to vindicate his candidacy—it did *not* involve infringement of a Title I right.

The point is this: Section 101(a)(1) guarantees to union members certain specified democratic rights, among them the right to nominate candidates in union elections. But it does not guarantee a right to be a candidate, nor does any other provision of Title I. As was observed by the court in *Johnson* v. *San Diego Waiters' Union* (SD Calif. 1961), 190 F. Supp. 444, at 447, "the emphasis there [in

Title I] is placed on the rights of the nominator, not the rights of the nominee." And cf. *Wayfield* v. *Babcock* (ED N. Y., June 10, 1963), 53 LRRM 2947, at 2948; 47 LC ¶ 18,375 (n/o/r).

In the *Mamula* case, *supra*, plaintiff had been disciplined for misconduct by removal from office and by being barred from office for five years, unless within that time he should return certain moneys misappropriated by him; cf. *Mamula* v. *Local 1211* (WD Pa. 1962), 202 F. Supp. 348; modif. *ibid*, 205 F. Supp. 915. He brought suit to direct the union to place his name on the ballot as a candidate for district office (cf. Petition, p. 40). The Court there observed, however, (cf. Petition, pp. 48-49) that Mamula's Title I right to nominate candidates had not been in any way infringed: he had not sought to nominate himself or anyone else, although (as chairman of the nominations meeting) he could have nominated anyone he liked. It remarked that the members who had nominated Mamula might possibly claim that Mamula's disqualification infringed *their* nomination rights, but that Mamula himself was in no position to make that claim (cf. Petition, p. 49).

In short, the dismissal of Mamula's complaint has no bearing upon the present issue, since that complaint did not rest upon a Title I right.

CONCLUSION

FOR THE FOREGOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

BURTON H. HALL,
Attorney for Respondents.

December, 1963.

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JAN 11 1964
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Supreme Court of the United States

October Term, 1963

No. 17

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

against

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

PETITIONER'S REPLY BRIEF

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Supreme Court of the United States

October Term, 1963

No. 688

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

against

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

PETITIONER'S REPLY BRIEF

1. Petitioner calls to the Court's attention the decision of the Court of Appeals for the Second Circuit in *Robins* v. *Rarback*, etc., et al. — F. 2d —, Docket No. 28281, decided December 26, 1963, six days after the petitioner herein filed its petition for a writ of certiorari. (The opinion of that Court is printed in Appendix A hereto at p. 5.)

In *Robins* v. *Rarback*, plaintiff's claim that Title I rather than Title IV of the Labor-Management Reporting and Disclosure Act of 1959 applied to alleged irregularities in a union election because such conduct deprived plaintiff of the right to cast an "effective" vote in a union election, was rejected by the Second Circuit. The Second Circuit, by a panel other than that in the instant case, held that Title IV applied and dismissed that claim for lack of jurisdiction. That Court stated:

> "It seems most unlikely that Congress would have provided these elaborate protections against un-

justifiable interference with internal union processes if it had intended at the same time that the courts should be free under Title I of the Act to reach the same result at the instance of the complaining member alone and without any requirement of exhaustion of remedies or investigation or finding by the Secretary.

"Nothing found in the legislative history of the Labor Management Reporting and Disclosure Act serves to illuminate the Congressional intent as to the relationship between Title I and Title IV. There is certainly nothing in that history which suggests that the protection of the right to vote in Title I authorizes the federal courts to enter freely upon the field of supervision of union elections, in total disregard of the limitations imposed on that power by Title IV". (Appendix A, *infra*, pp. 8-9.)

That case appears to be relevant to the instant case. The Second Circuit panel in the instant case appears to have invaded the area of Title IV, which was left by Congress exclusively to the action of the Secretary of Labor, in order to establish a violation of Title I. In *Robins v. Rarback*, the Second Circuit panel cautioned against such invasion.

At best the two decisions in the Second Circuit are further illustrative of the confusion that has been engendered by varying interpretations of the interplay between Title I and Title IV. Thus, there appears to be not only a conflict between the Second Circuit in the instant case and the Third Circuit in *Mamula v. United Steelworkers of America*, 304 F. 2d 108 (3d Cir.) cert. den. 371 U. S. 823 (1962), but also a fundamental difference of approach within the Second Circuit itself. Review by this Court becomes all the more essential in order to avoid further basic judicial lack of agreement on the relationship between Title I and Title IV.

2. In respondents' brief in opposition to the petition herein, the statement is made: "In short, the dismissal of Mamula's complaint has no bearing upon the present issue, since that complaint did not rest upon a Title I right" (Respondents' brief at page 8). Respondents argue that there is therefore no conflict between the action of the Second Circuit in the instant case and the action of the Third Circuit in the *Mamula* case.

Respondents are in error as to the fact. The complaint by plaintiff *Mamula* in *Mamula* v. *Steelworkers*, *supra*, was specifically grounded on Title I, Section 101(a)(1) of the Act. (Paragraph 26 of the complaint in *Mamula* v. *Steelworkers*, *supra*, appearing at pages 8a-9a of the Joint Appendix to the petition for certiorari in that case).

Moreover, the Third Circuit, in its opinion stated:

> "* * * [P]laintiff filed a complaint in the district court, alleging that defendants had denied him an opportunity to submit his name for candidacy to the membership and that the union's constitution and bylaws fail to prescribe procedures to be followed in selecting a nominee. This, he said, constituted a violation of Title I, Sections 101(a)(1)(2)(4) and 102, 29 U. S. C. A. Sections 411(a)(1)(2)(4) and 412 of the LMRDA * * *" (Appendix C, page 40, annexed to petition for writ of certiorari herein).

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 78—October Term, 1963.

(Argued October 18, 1963 Decided December 26, 1963.)

Docket No. 28281

HAROLD ROBINS, individually and on behalf of all other persons similarly situated,

Plaintiff-Appellant,

—v.—

MARTIN RARBACK, as Secretary-Treasurer, or MORRIS ARBOR, as Assistant Secretary-Treasurer, or LOUIS CAPUTO, as President, or FRANK BONA, as Vice President of District Council No. 9, Brotherhood of Painters, Decorators and Paperhangers of America,

—and—

THOMAS GIUNTA, individually and as President, or WILLIAM CIHELKA, as Treasurer, or JOHN W. ENRIGHT, as Financial Secretary, or JOHN STEINBECK, as Recording Secretary of Local Union 892, Brotherhood of Painters, Decorators and Paperhangers of America,

Defendants-Appellees.

Before:

WATERMAN, HAYS AND MARSHALL,

Circuit Judges.

BURTON H. HALL, New York City, *for Appellant.*

GEORGE POLIACK of Michael A. Buonora, New York City, *for Defendants-Appellees.*

HAYS, *Circuit Judge*:

The plaintiff moved for a preliminary injunction requiring certain procedures to be followed in a union election which was to be held on June 17, 1963. The district court denied the motion. Both the district court and this court denied motions to stay the election until the appeal from the denial of the preliminary injunction could be heard and decided. The election was held on June 17. It is clear that the appeal from the denial of a preliminary injunction is moot and must be dismissed.

In addition to denying the motion for a preliminary injunction the district court dismissed plaintiff's complaint and plaintiff also appeals from that action.

The complaint states two claims for relief, both assertedly based upon the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. § 401ff (Supp. IV 1959-62). The first claim alleges, in effect, that plaintiff was wrongfully and improperly disciplined by the District Council of the union and seeks damages and an injunction against The Council and its officials. The second claim alleges a number of irregularities in union elections and seeks an injunction restraining the local union and defendant Giunta from committing certain enumerated "electoral abuses."

Apparently defendant made no motion to dismiss the complaint. However, the district court dismissed the complaint in its entirety, giving the plaintiff leave to file an amended complaint setting forth the claim of improper discipline. The only reason given by the court for dismissing this claim was that the complaint was not clear as to which allegations referred to this claim and which to the second claim. The court was in error in dismissing the complaint on this ground. 2 Moore, Federal Practice ¶ 12.08, at 2245-6 (2d ed. 1962). See Fed. R. Civ. P. 12(e).

The claim as to "electoral abuses" was dismissed on the ground that the Labor Management Reporting and Disclosure Act gave the federal district courts no jurisdiction over such a claim. We agree that this claim fails to state

grounds for relief under that Act and therefore affirm the order dismissing it.

The theory of the plaintiff is that Sections 101(a)(1), 29 U. S. C. § 411(a)(1) (Supp. IV 1959-62), and 102, 29 U. S. C. § 412 (Supp. IV 1959-62), provide the basis for the remedy he seeks. Section 101(a)(1) provides in pertinent part only that "Every member of a labor organization shall have equal rights and privileges within such organization * * * to vote in elections. * * *"

The plaintiff has not been denied the right to vote and makes no claim based on any such denial. But he would have us construe the language of the statute as granting authority to the federal courts to control and direct the entire conduct of union elections on the theory that the right to vote is a right to cast an "effective" vote, and that a vote cannot be effective unless the election is properly conducted in all its aspects. Thus the abuses which the plaintiff would have us correct under the authority of Section 101(a)(1) are, as listed in his prayer for relief:

> "permitting any person other than the voter himself to handle a completed or filled out ballot prior to its being placed in the ballot box and before the time of counting ballots cast; permitting ballots to be marked by voters in any union election in any booth or other place that is not fully enclosed, on all sides, by a wall or curtain; permitting any person to vote in a union election without first subjecting his union book to examination by a proper election watcher, including the watcher or watchers appointed by opposition candidates; permitting any person to vote in a union election without first registering and producing identification. * * *"

If Section 101(a)(1) stood alone and was the only provision of the Act relating to elections we would be reluctant to hold that such a simple guaranty of the equal right to vote would carry with it the broad implications with which

the plaintiff would freight it. Surely if Congress intended the federal courts to assume a general supervision over the conduct of union elections it would express that intent in terms which are at the same time more specific and more general than are to be found in Section 101(a)(1).

But we are not forced to construe Section 101(a)(1) as if it stood alone. For Title IV of the same Act, 29 U. S. C. §§ 481-483 (Supp. IV 1959-62), provides for the very extensive supervision for which the plaintiff argues. However, under Title IV the power of the courts with respect to union elections is hedged about with procedural safeguards. Under Section 402, 29 U. S. C. § 482 (Supp. IV 1959-62), review in the courts of election irregularities may be had only when (a) the complaining member (1) has exhausted his remedies within the organization or has failed to get a final decision within three months after invoking his internal remedies, (2) has filed a complaint with the Secretary of Labor within one calendar month thereafter and (b) the Secretary has (1) investigated the complaint, (2) found probable cause to believe that a violation has occurred and has not been remedied and (3) has brought an action to set aside the election. Pending a final determination the election is to be presumed valid and the affairs of the organization are to be conducted by the elected officers.

It seems most unlikely that Congress would have provided these elaborate protections against unjustifiable interference with internal union processes if it had intended at the same time that the courts should be free under Title I of the Act to reach the same result at the instance of the complaining member alone and without any requirement of exhaustion of remedies or investigation or finding by the Secretary.

Nothing found in the legislative history of the Labor Management Reporting and Disclosure Act serves to illuminate the Congressional intent as to the relationship between Title I and Title IV. There is certainly nothing in that history which suggests that the protection of the right

to vote in Title I authorizes the federal courts to enter freely upon the field of supervision of union elections, in total disregard of the limitations imposed on that power by Title IV.

We are cited to only two appellate decisions which are said to bear directly upon this issue. One from our own circuit, *Boggia* v. *Hoffa*, 41 CCH Lab. Cas. ¶ 16,732 (2d Cir. Dec. 19, 1960), is not officially reported because it was merely a ruling on a motion. Since the ruling contains no information as to the posture of the case and since no briefs were submitted, we are unable to ascertain what, if any, rule the court intended to lay down. We decline to accept this brief direction of the court as authority which is binding upon us with respect to the issue with which we are now faced. In *Beckman* v. *Local 46, International Ass'n of Bridge Workers*, 314 F. 2d 848 (7th Cir. 1963), the Seventh Circuit did give a broad application to Section 101(a)(1). We respectfully disagree with the result reached in that case.

The recently decided case of *Harvey* v. *Calhoon*, — F. 2d — (2d Cir. 1963) holds merely that the plaintiff can enforce under § 102, the right expressly given by § 101 (a)(1) "to nominate candidates." It does not hold that under the guise of protecting the right to nominate candidates the court can control all phases of a union election.

We hold that plaintiff stated no valid claim for relief under the Labor Management Reporting and Disclosure Act and that his claim was properly dismissed.

Appeal from the denial of a preliminary injunction dismissed. Dismissal of the claim as to improper discipline reversed. Dismissal of the claim as to election abuses affirmed.

WATERMAN, *Circuit Judge* (concurring):

I concur in the dismissal here of the appeal from the denial below of a preliminary injunction. I concur in our reversal of the dismissal below of plaintiff's claim that

he was improperly disciplined. I also concur in the majority's affirmance of the dismissal below of plaintiff's claim for relief from election abuses, but as I regard as incorrect my brothers' construction of Section 101(a)(1) of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U. S. C. § 411(a)(1) (Supp. IV 1959-62), I am required to file this separate statement setting forth my views. In my judgment their construction of this important section of the "Bill of Rights" title of the LMRDA unduly constricts the right to vote that is therein guaranteed to union members.

In pertinent part Section 101(a)(1) states: "Every member of a labor organization shall have equal rights and privileges within such organization * * * to vote in elections or referendums of the labor organization * * *" The following section, Section 102, 29 U. S. C. § 412 (Supp. IV 1959-62), provides that civil actions may be brought in federal district courts by union members to enforce the rights assured by Section 101 when those rights have been violated.

I regard the Section 101(a)(1) voting right as being broad enough to protect union members from election practices which, if unchecked, would serve to render balloting at union elections a vain act. There is no language in Title IV of the Act, 29 U. S. C. §§ 481-83 (Supp. IV 1959-62), which persuades me, as my colleagues have been persuaded, that Section 101(a)(1) should be given any narrower a construction. My view of the relation between Section 101(a)(1) and Title IV accords with the position recently taken by the only other U. S. Court of Appeals which has had occasion to consider the relationship. In *Beckman* v. *Local 46, International Ass'n of Bridge Workers*, 314 F. 2d 848 (7 Cir. 1963), the Seventh Circuit decided that union members who had alleged the printing of an unexplained surplus of ballots and ballot box tampering at a union election had alleged a denial of the Section 101(a)(1) vot-

ing right.[1] The court incorporated into its opinion the following statement of the judge below: "Neither reason nor logic supports the suggestion that plaintiffs must now await the completion of the election and the counting of the purported ballots and then seek their remedy under Title IV. I think the statutory scheme of Title I would be defeated if the Act must be so construed, and applied". *Id.* at 851.

If the right to vote guaranteed by Section 101(a)(1) is to be at all meaningful the section must be regarded as demanding more than a simple provision in a union's constitution or by-laws formally stating that all members are entitled to cast a ballot. The majority's interpretation of this section, if my assessment of it is correct, reduces the guarantee of the right to vote to little more than this. Presumably the majority might also permit judicial intervention when members are actually denied access to the polling place. But even such a denial when accompanied by some explanation on the part of the defendants as, for example, a claim that the plaintiff voter had failed to identify himself properly, might present problems of election procedure creating issues of voting rights which the ma-

[1] *Beckman* is apparently the only Court of Appeals decision in which there has been discussion of the issues before us, and I agree with my brothers that our decision in *Boggia* v. *Hoffa* is without precedential value. In *Mamula* v. *United Steelworkers of America*, 304 F. 2d 108 (3 Cir.), cert. denied, 371 U. S. 823 (1962), the Third Circuit had occasion to consider the interplay between § 101(a)(1) and Title IV, but it appears that the issue dealt with there was whether the election rules set forth in § 401, 29 U. S. C. § 481 (Supp. IV 1959-62), could be used as a basis for a suit under § 102. The question whether union election practices so repressive as to effectively disenfranchise members could be attacked by a § 102 suit was not discussed. Moreover, the judgment which was reversed in that decision was one setting aside an election which had already been conducted. Also, there was an alternative holding to the effect that the plaintiff, suing in his capacity as a candidate for union office rather than in his capacity as a union member, lacked standing to sue under § 102.

jority would regard as being outside the proper province of a court to adjudicate.[2]

I am not persuaded by the majority's argument that the restrictions on election procedures set forth in Section 401, 29 U. S. C. § 481 (Supp. IV 1959-62), and the provision for invalidating elections through suit by the Secretary of Labor in Section 402, 29 U. S. C. § 482 (Supp. IV 1959-62), indicate a congressional intent to foreclose judicial inquiry into election abuses in a suit based on the deprivation of the right to vote. It is only when an election is sought to be examined after it has been declared concluded that a union member is required to refrain from bringing his own action to enforce his right to vote and to await suit by the Secretary of Labor, for Section 403, 29 U. S. C. § 483 (Supp. IV 1959-62), explicitly states in part: "The remedy provided by this subchapter [a suit by the Secretary of Labor] for challenging an election *already conducted* shall be exclusive". (Emphasis supplied.) I also have difficulty with my brothers' intimation that federal judges should not correct union election abuses as Congress somehow believed interference designed to assure this type of fairness in union internal affairs required a measure of expertise not possessed by judges. To the contrary, the

[2] It is not difficult to think of election procedures that in a more roundabout fashion would serve effectively to bar members from a polling place. In *Kolmonen* v. *International Hod Carriers' Union*, 215 F. Supp. 703 (W. D. Mich. 1963), the defendant union's members were scattered throughout the state of Michigan. The election procedures that were there attacked required all members who desired to vote to present themselves at the union's office in Detroit on a given day. This was found by the court to constitute a denial of the equal right to vote under § 101(a)(1), on the ground that the procedures discriminated against members living a substantial distance from that city. *Id.* at 707. The complaint was dismissed, however, inasmuch as the plaintiff had waited until after the completion of the election and had then, too late, sought, by his own suit, to have the court invalidate the election. His sole remedy under those circumstances was correctly deemed to be through a suit by the Secretary of Labor under Title IV.

entire bundle of member rights guaranteed by Sections 101(a)(1) and 101(a)(2) are, according to those sections, subject to reasonable union rules and regulations, and Congress placed the responsibility for determining the reasonableness of such rules and regulations squarely upon the courts. To me, this demonstrates that Congress had faith that the federal courts had vision enough to deal with the most vital questions that can arise from the administration by a union of its internal affairs. Indeed, even the task of determining the proper scope of the Section 101 rights themselves would seem to involve important considerations as to the legitimate conduct of a union's internal affairs. See *Harvey* v. *Calhoon*, — F. 2d — (2 Cir. Nov. 7, 1963) (dealing with the right to nominate candidates); *Salzhandler* v. *Caputo*, 316 F. 2d 445 (2 Cir. 1963), cert. denied — U. S. — (Dec. 9, 1963) (dealing with the right of free speech). Even in post-election suits brought by the Secretary of Labor the ultimate decision as to whether a new election is required rests with the courts. Therefore it is my view that the determination of claims that a union's election practices operate to deny the union members the right to vote is not fraught with such peculiar problems as to place it beyond the legitimate scope of judicial inquiry.

Therefore, in my view, a court in this kind of case would ordinarily be obliged to consider in detail the allegations made in the union member's complaint in order to determine whether the election practices claimed to exist are such as effectively to disenfranchise union members. Here, however, this additional task need not be undertaken, for there is an alternative ground which the majority opinion does not discuss upon which the lower court's dismissal of the claim of election abuses can be affirmed. Had my colleagues based their decision on the alternative ground, and had not undertaken to restrict the Section 101 voting right, I would not have been compelled to state my views as to the proper construction of that section. I hold that the

lower court's dismissal of that portion of the complaint that dealt with election abuses should be affirmed on the basis of the language of Section 102 of the Act. That section, which provides for the enforcement of rights guaranteed in Section 101, confines the granting of relief to situations where "rights have been violated." Plaintiff is seeking relief from a violation of his voting right which he predicts will take place in the future. The complaint states that the next election to be conducted by defendant union will not be until June of 1964. A union member cannot seek a permanent injunction under Section 102 to head off violations which he claims may take place at some future time.[3] Therefore the court below lacked jurisdiction over this particular claim.

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[3] Thus, the use of Section 101(a)(1) in attacking election practices would be confined to those limited situations in which the election procedures have been so far implemented as to actually have resulted in an infringement of members' rights, but where the election has not yet become an accomplished fact. See *Beckman* v. *Local 46, International Ass'n of Bridge Workers, supra; Young* v. *Hayes*, 195 F. Supp. 911 (D. D. C. 1961). Of course, in situations where a union has enacted provisions into its constitution or by-laws which are barred by the LMRDA, a pre-election suit may be brought to enjoin the conduct of an election to be held pursuant to such provisions. See *Harvey* v. *Calhoon, supra*. Finally, the right to bring a pre-elction suit to compel compliance with a union's constitution and by-laws is explicitly preserved by §-403 of the LMRDA.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 17

JESSE M. CALHOON, AS PRESIDENT, OR HERBERT W. PETERS, AS SECRETARY-TREASURER OF DISTRICT NO. 1, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,
Petitioner,

v.

RAYMOND H. HARVEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The AFL-CIO has affiliated with it 131 national and international labor organizations representing a total membership of about thirteen million. The Federation wants these organizations and their affiliated local unions to be responsive to the needs and desires of their members. It also wants them to be effective instruments for advancing the economic and social interests of the employees they represent. Fulfillment of this dual objective calls for knowledgeable and responsible union leaders, chosen in accordance with standards and procedures freely adopted by each organization, with a minimum of interference from outside sources.

Petitioner will naturally be most concerned with the particular facts of the instant case. But much more is at stake. This case provides this Court with its first opportunity to consider the relationship of titles I and IV of the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, 73 Stat. 519, 29 U.S.C. §401 *et seq.*, in their application to the critical subject of union elections. Inevitably, the Court's decision will do much toward laying down the ground rules governing any attack upon a union's electoral processes. The AFL-CIO is vitally interested in seeing that this Court is aware of what its decision will mean for union democracy and for union effectiveness. We feel our presentation, which will be less concerned with the facts of this case than with the whole range of legal remedies available to anyone challenging union election procedures, will assist the Court in interpreting the statute so as best to promote both individual and organizational rights and responsibilities.

ARGUMENT

A fair reading of the statutory language in titles I and IV of the Landrum-Griffin Act, and of the accompanying legislative materials, establishes that Congress intended three separate and distinct methods to be available for

challenging a labor organization's election standards and procedures. The method to be employed in any given case depends on the nature and timing of the challenge: (1) a member may bring a private suit in federal court to prevent discrimination against him in the exercise of certain basic individual rights guaranteed by title I, such as the right to vote, and a candidate may bring a private suit in federal court to enforce certain designated campaigning rights guaranteed by title IV; (2) prior to an election, a member may bring a private suit in state court to enforce compliance with the union's constitution and bylaws; and (3) after an election, the Secretary of Labor, upon receiving a complaint from an aggrieved member and upon finding probable cause to believe that an unremedied violation of the election procedures prescribed by title IV has occurred, may bring a suit in federal court to set aside the affected election.

We do not understand the Court of Appeals below, or respondents here, to dispute the above analysis in this case. Their approach, rather, has been to try to transform what is at bottom an issue regarding the reasonableness of the qualifications prescribed for candidates for union office, a matter which title IV of the Act places in the hands of the Secretary of Labor, into an issue regarding the equal right to nominate candidates, a matter which title I makes subject to private suit. The effect is to circumvent the clearly demarcated channels of enforcement that Congress created. If a title IV question can be smuggled into title I in the present situation, the same maneuver can be executed in many other situations. We will show that such a result would be contrary to the law the Congress wrote, and contrary to the sound policy of allowing only a necessary minimum of outside interference with a labor organization's voluntarily adopted election standards and procedures.

I. Congress Intended Questions Regarding The Reasonableness Of The Eligibility Requirements For Union Office To Be

Governed By Title IV Of The Landrum-Griffin Act, Enforceable By The Secretary Of Labor, And Not By Title I, Enforceable By Private Suit.

Two easily demonstrated propositions will resolve the issue before this Court. First, Congress intended that questions bearing essentially on the reasonableness of the eligibility requirements for union office were to be governed by title IV of the Landrum-Griffin Act, and not by title I. Secondly, Congress deliberately chose to authorize the Secretary of Labor to contest the reasonableness of a union's qualifications on candidacies, and deliberately refused to allow individual union members to contest the matter in private suits.

As reported by the Senate Labor Committee, S. 1555, 86th Cong., 1st Sess. (1959), then known as the Kennedy-Ervin bill, had in its title III the precursor of the present elections provision, title IV. The bill contained no equivalent of the present title I, the so-called "Bill of Rights." Section 301(d) of the bill was almost identical to section 401(e) as enacted in providing, *inter alia*, that "'a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to reasonable qualifications uniformly imposed)." Section 302 was substantially the same as section 402 of the Act in authorizing the Secretary of Labor, upon complaint of a union member who had exhausted reasonable internal remedies for an alleged violation of the elections title (including violation of the union's own elections rules), to bring a federal court action "to set aside the invalid election."

Section 303 of S. 1555, not significantly different from section 403 of the present law, read as follows:

> "No labor organization subject to the provisions of this title shall be required by law to conduct elections of officers with greater frequency or in a different form

> or manner than is required by its own constitution or bylaws except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

Title III of the bill which reached the Senate floor amounted to a comprehensive federal code for the regulation of union elections, including both nominations and balloting. Section 303 expressly displaced all other law covering the conduct of such elections, with a single stated exception. Prior to a vote, existing procedures "to enforce the constitution and bylaws of a labor organization" could be utilized. This meant there could still be recourse to state courts through a private suit before the election to compel adherence to—but not variation from—the union's own election rules. Otherwise, the Secretary of Labor was to have exclusive authority to challenge election procedures.

Each of these points was underlined by the Senate Labor Committee's Report. The bill would preserve "rights and remedies which union members have under existing law *to insure compliance with provisions of a union's constitution and bylaws* relating to elections prior to the conduct of an election." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21 (1959). (Emphasis supplied.) But in the case of "overthrowing an improperly held election and holding a new election, the Federal remedy is made the sole remedy and private litigation would be precluded." *Ibid.* Some of the thinking behind this restrictive approach is indicated by the Committee's reason for requiring a member to pursue internal remedies before filing a complaint with the Secretary: "This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." *Ibid.*

The need for federal law to occupy the elections field was explained as follows:

> "There is great need for uniformity in the laws governing union elections. *** It is easier to enforce one uniform rule than a crazy quilt of State legislation and court decisions. Ill-considered State laws would interfere with the national labor policy. Too stringent laws would handicap unions in dealing with employers. Too frequent elections may keep a union in a state of turmoil and could result in instability in collective bargaining relationships with employers." S. Rep. No. 187, 86th Cong., 1st Sess., pp. 21-22 (1959).

It is thus apparent that as S. 1555 cleared the Senate Labor Committee, it left no room for a private suit in either federal or state court aimed, as the present suit is aimed, at compelling deviation from, rather than adherence to, a union's own election standards and procedures. Respondents have rightly concluded they must look elsewhere if they are to find any warrant for their present action.[1]

Their reliance is on title I of the Act, which was added on the Senate floor. The Senate first adopted, by a vote of 47 to 46, a "Bill of Rights" amendment proposed by Senator

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[1] One academic commentator has argued that even those portions of title III of the Senate bill taken over without significant change into title IV of the Act are enforceable by private pre-election suits in either federal or state courts. Summers, "Preemption and the Labor Reform Act—Dual Rights and Remedies," 22 Ohio State L.J. 119, 135-140 (1961). There is not a hint in the statutory language or legislative history that Congress shared this notion, and in our view the indications all point the other way. See pp. 8-11, *infra*. The Summers view has consistently been rejected by the lower federal courts. See, *e.g.*, *Colpo* v. *Teamsters Local 107*, 201 F. Supp. 307 (D. Del. 1961), *vacated as moot* 305 F. 2d 362 (3d Cir. 1962), *cert. den.* 371 U.S. 890; *Johnson* v. *San Diego Waiters and Bartenders*, 190 F. Supp. 444 (S.D. Calif. 1961); *Jackson* v. *Longshoremen*, 212 F. Supp. 79 (E.D. La. 1962). *Cf. Mamula* v. *Steelworkers*, 304 F. 2d 108, 111 (3d Cir. 1962), *cert. den.* 371 U.S. 823; *Robins* v. *Rarback*, 325 F. 2d 929, 930-31 (2d Cir. 1963).

McClellan. 105 Daily Cong. Rec. 5827 (April 22, 1959), 2 Leg. Hist. LMRDA 1119 (NLRB ed.).[2] Three days later, a modified version offered by Senator Kuchel was substituted, 105 Daily Cong. Rec. 6030 (April 25, 1959), 2 Leg. Hist. 1239, and so far as is pertinent here, the title was enacted in this form. Section 101(a)(1) provides that every union member shall have "equal rights" to "nominate candidates," to "vote" in "elections or referendums," to "attend membership meetings," and to "participate in the deliberations and voting upon the business" of those meetings, "subject to reasonable rules and regulations" in the union's constitution or bylaws. Section 102 provides for civil enforcement of these and other title I rights through a private suit in federal district court.

In urging adoption of his original "equal rights" section, which was somewhat broader and less specific than the Kuchel substitute, Senator McClellan did not discuss whether the provision might overlap the regulatory scheme set forth in title III (now title IV). The Senator simply indicated that his amendment was designed to prevent "the denial of the basic human rights on which our very freedom was founded." 105 Daily Cong. Rec. 5811 (April 22, 1959), 2 Leg. Hist. 1103.

Senator Kuchel, however, could hardly have been plainer regarding the effect of his more precisely drawn substitute on qualifications for union office. Said he: "I do not believe that in any fashion the equal rights section touches what the provisions of the constitution or bylaws might be with respect to the right to run for office." 105 Daily Cong. Rec. 6023 (April 25, 1959), 2 Leg. Hist. 1232. Both Senators Kennedy and Cooper then observed that the "right to be a candidate" was guaranteed by the elections title of the

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[2] Reference is to the two-volume Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 prepared by the National Labor Relations Board, hereinafter cited "Leg. Hist."

bill; Senator Kennedy said this was one of the *"other* rights" which was secured *"in addition* to the rights guaranteed in the bill of rights." 105 Daily Cong. Rec. 6024 (April 25, 1959), 2 Leg. Hist. 1233. (Emphasis supplied.) The accent was on the separate and distinct functions of the two titles, and no overlap as to eligibility requirements was envisaged. Indeed, it was one of Senator Goldwater's major complaints against the Kuchel substitute that it gave "no protection of a member's right to be a candidate for or to hold union office," but instead left this matter to be dealt with solely by the Secretary of Labor under title IV. 105 Daily Cong. Rec. 9108, 9114 (June 8, 1959), 2 Leg. Hist. 1280, 1286.

Section 101(a)(1) is not even primarily directed toward the substance of a union's standards; it is primarily directed toward their "equal" application. As expressed by supporters of the Landrum-Griffin bill on the House Education and Labor Committee, the target is "*[d]iscrimination* against groups or classes of members" in the exercise of "specifically enumerated rights." H. Rep. No. 741, 86th Cong., 1st Sess., p. 95 (1959) (Minority Views). (Emphasis supplied.) Those "specifically enumerated rights" include the "equal" right "to nominate candidates." They do not necessarily encompass any particular nomination standards or procedures. And what is most important, they do not cover at all the right to be a candidate.

The most significant effect of the dichotomy between titles I and IV is of course the difference in the mode of enforcement. Title I for the most part, and so far as is relevant here, is enforceable by private suit in federal district court. Title IV for the most part, and so far as is relevant here, is enforceable by the Secretary of Labor in a post-election suit. Congress made each decision deliberately after fully canvassing the alternatives.

The original McClellan "Bill of Rights" would have been

enforceable by the Secretary of Labor. Senator Kuchel characterized as "one of the major changes" in his title I substitute the provision for private enforcement in place of enforcement by the Secretary. 105 Daily Cong. Rec. 6021, 6023 (April 25, 1959), 2 Leg. Hist. 1230, 1232.

A bill sponsored by the Eisenhower Administration and introduced by Senator Goldwater, S. 748, 86th Cong., 1st Sess., §§303(d), 405 (1959), would have authorized actions by either union members or the Secretary of Labor to remedy violations of the elections provisions. As passed by the House, the Landrum-Griffin bill, H. R. 8400, 86th Cong., 1st Sess., §402(a)(1959), empowered union members, but not the Secretary, to sue. The Conference Committee accepted the Senate bill's provision for enforcement by the Secretary of Labor rather than by private actions. See H. Conf. Rep. No. 1147, 86th Cong., 1st Sess., p. 35 (1959); 105 Daily Cong. Rec. 16415 (Sept. 3, 1959), 2 Leg. Hist. 1433 (Sen. Kennedy). Whenever there was to be any deviation from this pattern, and individual suits were to be allowed, *e.g.*, to enforce a candidate's right to distribute campaign literature,[3] express language to that effect was inserted in the statute. 73 Stat. 532, §401(e)(1959), 29 U.S.C. §481(e).

The exclusive power of the Secretary of Labor to enforce Title IV as enacted, with the exception just noted and with the exception of private pre-election suits to compel compliance with a union's own election rules, was acknowledged or assumed on all sides. Senator Kennedy explained:

> "I believe we have established certain precise rights. In the case of elections we preempt action for the Federal Government after the election is held. *** Prior to the day of an election an individual can sue

[3] Private suits to enforce this particular right were authorized by an amendment added on the floor of the Senate. 105 Daily Cong. Rec. 6031-33 (April 25, 1959), 2 Leg. Hist. 1240-42.

> in a State. The day after an election the Secretary of Labor assumes jurisdiction. ***
>
> "When unfairness is committed in an election, the bill provides that the Secretary of Labor shall have the right to set the election aside. I do not think State laws provide adequate remedies in that field; and, for that reason, this bill does." 105 Daily Cong. Rec. 5819-21 (April 22, 1959), 2 Leg. Hist. 1111-13.

So far as the issue before this Court is concerned, the comments of the minority members of the Senate Labor Committee on the elections title of S. 1555 as reported are as pertinent now as when they were made:

> "*Election safeguards.*—(a) Creates a Federal court action by the Secretary to challenge an election which has already been held and preempts any similar State remedy. The Secretary's remedy is exclusive and is the only one the union member may use—he *loses* his State remedy.
>
> "(b) But if there are abuses in connection with an election prior to its being held, the bill provides no Federal remedy at all. The union member's only relief can come only through whatever State law may exist on this subject." S. Rep. No. 187, 86th Cong., 1st Sess., p. 104 (1959)(Minority Views). (Emphasis in the original.)

In an analysis of S. 1555 as passed by the Senate, Senator Goldwater objected that the relevant portion of title IV "does not even extend the right to a union member to bring a civil suit in Federal court which is provided for violation of the rights set forth in title I." 105 Daily Cong. Rec. 9114 (June 8, 1959), 2 Leg. Hist. 1286. He added: "Section 403 provides that there shall be no preemption of State remedies with respect to *violations* of the provisions of a union's constitution or bylaws pertaining to the election of officers prior to the conduct of the election." 105 Daily

Cong. Rec. 9115 (June 8, 1959), 2 Leg. Hist. 1287. (Emphasis supplied.)

Although section 603(a) of the Act preserves union members' rights under state law except as otherwise provided in the Act, section 403 makes plain that as to union elections the federal procedure is exclusive apart from "[e]xisting rights and remedies to enforce the constitution and bylaws." Former Professor Archibald Cox, Senator Kennedy's principal technical advisor on the bill, confirms and explains this as follows:

> "Section 403 provides careful and apparently sound rules concerning the relation between state and federal law. State regulation of union elections is barred in the interest of uniformity. ***
>
> "Since these considerations do not apply to a suit to enforce a union's own constitution or by-laws, section 403 preserves state remedies prior to an election."[4]

So a state court action to *contest* the constitutional eligibility requirements for union office here would also be foreclosed. Respondents' proper recourse would be a timely complaint to the Secretary of Labor.

The congressional scheme for elections, in sum, was (1) to authorize private suits in federal district court to enforce certain rights of individual members guaranteed by title I, such as the "equal" right to vote and the "equal" right to nominate candidates, and to enforce certain rights of individual candidates guaranteed by title IV, such as the right to have campaign literature distributed; (2) to leave

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[4] Cox, "Internal Affairs of Labor Unions Under the Labor Reform Act of 1959," 58 Mich. L. Rev. 819, 845-46 (1960). In discussing §401(e), Professor Cox noted that "the Secretary is in charge of all proceedings to enforce the elections requirements." *Id.* at 834, n. 52.

available existing state remedies to enforce a union's election rules through pre-election private suits; and (3) to grant to the Secretary of Labor the exclusive power to bring post-election suits in federal district court to challenge an election on the ground it was held in violation of title IV or in violation of the union's constitution and bylaws. Respondents in this litigation do not dispute the foregoing analysis [5]—only its necessary consequences.

Respondents alleged, and the Court of Appeals below agreed, that their "equal" right "to nominate candidates" had been infringed because of the combined effect of provisions in the union's constitution and bylaws that a member (1) could only nominate himself for office; and (2) had to put in a stipulated amount of time working at the trade in order to be eligible for union office, and, to be eligible for district president, had to have served previously as a full-time, elected union official (R. 5-7, 123-24).[6] The short answer to this contention has been made by petitioner. Respondents' "equal rights" to nominate candidates for union office were not infringed; they were exercised. Each respondent sought to nominate himself for union office, and each did so (R. 27). The self-nomination procedure was as effective as any other nominating procedure would have

[5] Respondents invoked the jurisdiction of the District Court below under §102 of the Landrum-Griffin Act, and the Court of Appeals held that federal jurisdiction was properly so laid, on the ground that the complaint alleged a denial of the "equal" right "to nominate candidates" secured by §101(a)(1) of the Act (R.2, 119). No one doubts respondents could have sued to enforce their "equal" right to nominate candidates, if that was what their suit was really all about.

[6] The Court of Appeals did not hold that the "self-nomination restriction," standing alone, violated §101(a)(1); it grounded its finding of a violation upon the "*combined effect* of the *eligibility requirements* and the restriction to self-nomination" (R. 123-24). (Emphasis supplied.) In its foray into the area of "eligibility requirements" the court trod upon territory within the exclusive domain of the Secretary of Labor.

been. That each respondent was subsequently disqualified *as a candidate* by the union's credentials committee for failure to put in the required amount of time working at the trade may raise a question under title IV's guarantee of the right to be a candidate, but it has nothing whatsoever to do with title I's guarantee of the right to nominate.

Any other conclusion makes a mockery of the carefully delineated regulatory system devised by Congress, under which questions regarding the reasonableness of a union's qualifications for office were to be governed by title IV of the Act and not by title I. Obviously, *any* qualification on the right to run for office limits the persons whom it is feasible to nominate as a candidate. But title I's concern is who may be a nominator, not who may be a nominee and candidate. The latter issue is to be controlled solely by title IV.

If the compartmentalized approach which Congress so deliberately chose is to have any meaning, that distinction must be observed. Otherwise, the ingenuity of counsel can be relied upon to convert almost every restriction on the right to be a candidate into an alleged violation of the "equal" right to nominate, and almost every instance of election misconduct into an alleged violation of the "equal" right to vote. This is no fanciful supposition. Already the Third Circuit has had to point out that title I's equal right to nominate does not embrace a candidate's right to be nominated, but only a member's right to make nominations, *Mamula* v. *Steelworkers*, 304 F. 2d 108, 113 (3d Cir. 1962), *cert. den.* 371 U.S. 823, and the Second Circuit has had to rule that title I's equal right to vote does not cover "the entire conduct of union elections on the theory that the right to vote is a right to cast an 'effective' vote, and that a vote cannot be effective unless the election is properly

conducted in all its aspects," *Robins* v. *Rarback*, 325 F. 2d 929, 930 (2d Cir. 1963).[7]

Adherence to the law the Congress wrote demands that actions to vary a union's election standards and procedures be limited to post-election suits by the Secretary of Labor under title IV, with the only exceptions being private suits under title I to enforce the "equal" right to nominate candidates and to vote, and under title IV to enforce candidates' campaigning rights. As we shall next show, sound labor policy supports what the statutory language and legislative history require.

II. The Congressional Policies Of Securing Uniform Legal Standards For Union Elections And Of Maintaining A Maximum Of Union Self-Government Are Best Promoted By Leaving Enforcement Of The Elections Provisions Of The Act To The Secretary Of Labor.

Several distinct but intertwined strands of thought running through the legislative materials disclose the various policies which Congress sought to promote by entrusting enforcement of most of the elections provisions of the Landrum-Griffin Act to the Secretary of Labor, and by restricting private suits to the enforcement of certain

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[7] Some overlap between titles I and IV as to the substantive regulation of voting rights may be possible, since §101(a)(1) guarantees the "equal" right to vote, §401(e) likewise guarantees the right to vote, and §401(e) requires adequate safeguards to ensure a fair election. *Cf. Beckman* v. *Iron Workers Local 46*, 314 F. 2d 848, 850 (7th Cir. 1963) ("District Judge indicated in his opinion that he agreed with defendants' position that if the right to vote, as guaranteed by 29 U.S.C. §411(a)(1), was preserved, and there was here a mere infirmity or irregularity in the conduct of the election (not tantamount to denial of the right to vote) then a Title IV question would be presented"). Title I, naturally, could come into play only prior to the election, as §403 provides: "The remedy provided by this title for challenging an election already conducted shall be exclusive." No overlap at all exists in the case of eligibility requirements, since they are governed entirely by title IV.

enumerated rights of individual members under title I and of individual candidates under title IV. Among these policy goals were the following:

1. *Uniformity in the law through administration by a specialized agency.* In reporting out S. 1555, the Senate Labor Committee declared: "There is great need for uniformity in the laws governing union elections." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21 (1959). Under the bill as reported, "private litigation would be precluded," except for pre-election actions to enforce the union's own election rules. *Ibid.* Uniformity would be attained not just by laying down a single rule of federal law, but by assigning its enforcement to a "centralized administrative agency, *** equipped with its specialized knowledge and cumulative experience." *Cf. San Diego Building Trades Council* v. *Garmon,* 359 U. S. 236, 242. As this Court has said: "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner* v. *Teamsters Local 776,* 346 U. S. 485, 490-91. Senator Kennedy underscored this point when he reported to the Senate on the conference:

> "The Landrum-Griffin bill would have substituted a *variety of suits* by individual members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored." 105 Daily Cong. Rec. 16415 (Sept. 3, 1959), 2 Leg. Hist. 1433. (Emphasis supplied.)

The provisions in the Act which authorize certain individual suits in connection with elections impinge on this principle of uniformity, but only in a limited fashion. Title I suits to protect the "equal" rights to vote and to nominate candidates merely require a court to see that the union's own rules are applied to all members without arbitrary distinctions or classifications. Title IV suits to protect a

candidate's campaigning rights deal with a narrow and well-defined set of union obligations.[8] None of these cases call for the sort of judgment needed in determining what are "reasonable qualifications" for union office. In the main, as emphasized by the conference agreement to accept the Senate rather than the House provision on enforcement, the concept of uniformity in the regulation of elections was heeded.

2. *Maximum union autonomy.* As the first of three principles followed in acting on S. 1555, the Senate Labor Committee listed "the desirability of minimum interference by Government in the internal affairs of any private organization." S. Rep. No. 187, 86th Cong., 1st Sess., p. 7 (1959). The Committee commented that "in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents." *Ibid.* After discussing the provision for enforcement of the elections title by the Secretary of Labor upon complaint of a member who had pursued any available internal remedies in a timely manner, the Committee stated: "This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." *Id.* at 21.

Invalidation of an election which has been conducted improperly is a stern sanction if an international fails in its duty. Had Congress thought it necessary to trench further upon union autonomy by permitting wider judicial regulation at the behest of individual members, such regulation could easily have been authorized. However, apart from the specifically enumerated rights in titles I and IV which

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[8] Sen. Kennedy felt even this type of right would have been adequately protected by S. 1555's provision that the Secretary of Labor could sue to set aside an election in the event of a violation. 105 Daily Cong. Rec. 5826 (April 22, 1959), 2 Leg. Hist. 1118.

amendments added on the Senate floor made enforceable by private suit, the congressional judgment was that the elections provisions of the Act would be adequately enforced through post-election suits by the Secretary of Labor. That judgment must be respected. Broadscale pre-election intrusion by the courts would thwart the congressional policy of encouraging a union to police its own election standards and procedures.

Judge Paul Hays, formerly professor of labor law at Columbia, expressly relied upon this element of minimizing intervention in a union's internal affairs, when he spoke for the majority of a Second Circuit panel in striking down an effort to rely on the equal-right-to-vote clause of section 101(a)(1) as the basis for a private suit to enjoin certain alleged "electoral abuses," in *Robins* v. *Rarback*, 325 F. 2d 929, 931 (2d Cir. 1963):

> "It seems most unlikely that Congress would have provided these elaborate protections against unjustifiable interference with internal union processes if it had intended at the same time that the courts should be free under Title I of the Act to reach the same result at the instance of the complaining member alone and without any requirement of exhaustion of remedies or investigation or finding by the Secretary."

What Judge Hays said about trying to use the equal right to vote in order to circumvent the procedural barriers to title IV's more extensive arsenal of rights and remedies is equally applicable to the present attempt to use the equal right to nominate for the same purpose.

3. *Enforcement of public or group rights by a public agency, and of individual rights by individual suit.* The notion that public or group rights should be enforced by a public agency and that individual rights should be enforced by individual suit also seems to have entered into the thinking of Congress in deciding upon enforcement procedures.

In arguing for enforcement of title IV by the Secretary of Labor, Senator Goldwater remarked: "Since the election standards are designed to insure honest elections for the benefit of all union members as a matter of public policy, their violation is a matter of public rather than exclusively individual concern." 105 Daily Cong. Rec. 15119 (Aug. 20, 1959), 2 Leg. Hist. 1359.[9] On the other hand, title I's "Bill of Rights" was intended to cover certain basic individual rights, and it was felt that "giving this type of right to the aggrieved employee member himself is in the interest of justice, and therefore we propose to eliminate from the bill the right of the Secretary of Labor to sue in his behalf." 105 Daily Cong. Rec. 6023 (April 25, 1959), 2 Leg. Hist. 1232 (Sen. Kuchel).

Section 101(a)(1) is aimed at eliminating *discrimination* among union-members in the exercise of certain specifically enumerated rights, and other sections of title I are concerned with such matters as free speech and freedom from improper discipline. Obviously, these are items of peculiarly personal concern. Although it would be going too far to suggest there is any sharp line between the two categories, it is also obvious that when one reaches such issues as the reasonableness of a union's qualifications for office, there is a shift over into an area of more concern to the organization as a whole. Accordingly, there is logic in limiting the capacity of an individual member to act directly to obtain judicial alteration of his union's organizational structure, standards, or procedures, while granting him the power to contest in a private suit his union's denying him rights and privileges accorded his fellow members.

The nominating procedures and eligibility requirements at issue in this very case illustrate the need for an expert's

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[9] Sen. Goldwater would have had title IV enforceable both by the Secretary of Labor and by private suit, but his proposal to this effect was not adopted. See p. 9, *supra*.

appraisal to avoid improper interference with a labor organization's autonomy. What may seem to the inexperienced eye to be an attempt to block access to union office through the imposition of arbitrary standards may be viewed by a person familiar with trade union practice as an entirely reasonable prescription for ensuring the knowledgeable and responsible union leadership needed to advance the best interests of the union's membership. The Court of Appeals below found offensive the "combined effect of the eligibility requirements and the restriction to self-nomination" (R. 123). The eligibility requirements for office included a stipulated amount of sea time during the preceding three years, except in the case of incumbent officers. Candidates for district president also had to have prior service in some full-time elective union office (R. 70, 123). Restrictions of this general nature are not at all uncommon among labor organizations, in fact if not by rule, particularly at the national or international level.

The Bureau of Labor Statistics, in a study of international constitutions, reports:

> "Union constitutions frequently required that prospective international union officers must have been union members for a specified number of years, and must have obtained some 'on the job' experience in the trades or industries represented by the unions. Such requirements, it is reasonable to assume, were designed to assure a national leadership which has established a record of participation in union affairs and is familiar with the problems of the industry. ***
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> "Constitutions which listed trade experience as one of the qualifications usually waived this requirement for members holding union office or those employed on the union staffs."[10]

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[10] U.S. Dept. Labor, Bur. of Labor Stat. Bull. No. 1239, *Union Constitution Provisions: Election and Tenure of National and International Union Officers* 1-2 (1958).

Although union membership and trade experience, often for a specified period, may be the only formal requirements for elective office in many organizations, labor scholar William Leiserson was only being realistic when he commented:

> "*** the constitutional qualifications have little to do with the actual selection of the president and other executives. *** The president usually has a record of previous office holding, and other national executives have had experience as local or district officers. ***
>
> "The experience in previous officeholding that is necessary to qualify for president is acquired by successful union activity."[11]

An argument can certainly be made that a union ought to be able to impose as a formal qualification what the memberships of other organizations insist upon in actual practice.

It is not really important whether this Court concludes that any of these various eligibility standards, most of which are presumably accepted as fair and reasonable in the case of international offices, may likewise be applicable, in some form or other, to the district offices involved here.[12] What is important is recognition that a proper determination calls for an informed, expert judgment, and that Congress entrusted the task in the first instance to the Secretary of Labor. Three highly respected labor arbitrators serving on a Presidential Board of Inquiry reported to President

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[11] Leiserson, *American Trade Union Democracy*, 242, 245 (Columbia, 1959).

[12] District No. 1 of the Marine Engineers appears technically to be a local union within the meaning of the Landrum-Griffin Act. It has certain attributes, however, of a higher level body. The district was reorganized in 1960 through the consolidation of a dozen subordinate organizations into a single body having territorial jurisdiction covering the East and Gulf coasts (R. 32-33, 37 [Ex. "A," p. 2], 56-57).

Kennedy in 1961 that the "collective bargaining structure in the maritime industry is most complex," and that the "collective bargaining relationships in this industry are *** exceedingly complicated and confusing" (R. 30). To ensure that even district officers would be capable of effective representation of employees in such an industry, a labor specialist might well conclude that the experience required by the Marine Engineers' constitution was not unreasonable. But of course the merits of the union's qualifications for office are not our concern in this case.

The inadequacy of the treatment by the Court of Appeals below is epitomized by its failure to realize that the provision for self-nomination (by letter) is a liberal, not a restrictive, arrangement in a labor organization. This is especially true in a union of seafaring men, where a member and his supporters might not be able to attend a nominations meeting. In the survey by the Bureau of Labor Statistics previously mentioned, the most open system of nominating was found to be that whereby "[a]few unions permitted any member to nominate himself, provided that he was able to obtain sufficient endorsement."[13] Here there was not even a need for endorsements or seconds. Respondents shared the "equal" right of self-nomination with all their fellow members; and, even if the "reasonableness" of the nominating procedure may be litigated under title I, the District Court was surely correct in holding it reasonable (R. 114).

The Court of Appeals below, relying on the sophistry that a self-nomination procedure automatically equates the right to be a candidate with the right to nominate (R. 123), would thrust directly upon the federal courts the critical function of passing upon the reasonableness of a union's qualifications for office. The elaborate procedures so carefully laid out in the statute would thus be bypassed, and

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[13] Bur. of Labor Stat. Bull. No. 1239, *supra* note 10, at 7.

the congressional policies of promoting the uniform administration of the law by a specialized agency, and of maintaining a maximum of union autonomy, would be frustrated.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the brief for petitioner, the judgment of the Court of Appeals below should be reversed.

Respectfully submitted,

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August 1964

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 17

JESSE M. CALHOON, ETC., PETITIONER

v.

RAYMOND H. HARVEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is filed pursuant to the Court's order granting certiorari and inviting the Solicitor General to file a brief expressing the views of the United States (R. 132; 375 U.S. 991).

The by-laws of District No. 1 of the National Marine Engineers' Beneficial Association (the "Association") provide that "Any member may submit his name for nomination" for District office (R. 37, pp. 18–20). The constitution in turn prescribes that to be qualified as a candidate a nominee must meet stated eligibility requirements. In addition to being a member in good standing, he (a) must have been a member of the Association for five years, (b) must have been a member of the particular district for two years, and (c) must have had at least 180 days of

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employment on vessels covered by an Association contract within two of the three preceding years or equal service as a full-time paid official, elected or appointed, of the Association or a subordinate or affiliated local unit (R. 70). In addition, a candidate for the office of District President must have previously served as a full-time paid elected official of a subordinate or affiliated unit (R. 70).[1]

Respondents, members of District No. 1, nominated themselves for District office but were held not qualified by the District Credentials Committee for failure to meet the eligibility requirements (R. 8, 27). Respondents then brought this action to enjoin future District elections contending *inter alia* that the eligibility requirements and the provision for self-nomination "infringe the right of members of defendant District No. 1, NMEBA, to nominate candidates * * * guaranteed * * * by Section 101(a)(1)" of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411(a)(1) (R. 5–6, 8).

The court of appeals held that "combined effect of the eligibility requirements and the restriction to self-nomination" constituted a violation of Section 101 (a)(1) and that respondents were entitled to a temporary injunction against the holding of the election

[1] The Association's constitution was amended in April 1964 to reduce the requirement of prior membership from five to three years; to delete the requirement that a candidate for District President must have previously held a paid office in the union; and to state that "it has been and shall continue to be the meaning of any applicable provision and the practice thereunder that any member has the right to nominate himself or any other member * * *."

under the present constitution and by-laws (R. 123, 125). In our judgment the decision of the court of appeals misconstrued the guarantee of "equal rights" afforded by Section 101(a)(1). Accordingly, we join petitioner in urging the Court to reverse the judgment below.

Titles I and IV of the Labor-Management Reporting and Disclosure Act are aimed at guaranteeing union democracy. Title IV is devoted to elections. It requires every local labor organization to elect its officials not less than once every three years by secret ballot among members in good standing (Section 401 (b), 29 U.S.C. 481(b)). It further provides that in any such election "a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject * * * to reasonable qualifications uniformly imposed) * * *" (Section 401(e), 29 U.S.C. 481(e)). A union member may seek enforcement of the rights conferred by these provisions pursuant to Section 402 of Title IV, 29 U.S.C. 482, by filing a complaint with the Secretary of Labor, who is given exclusive jurisdiction to institute proceedings in the federal district courts to challenge an election already conducted (Sections 402, 403, 29 U.S.C. 482, 483).

Title I is the so-called "Bill of Rights" title. It was added on the Senate floor to prevent "the denial

of the basic human rights on which our very freedom was founded."[1] Section 101, as its title states, is a guarantee of "equal rights." It provides that

> Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates * * * subject to reasonable rules and regulations in such organization's constitution and bylaws.

Section 102 of Title I, 29 U.S.C. 412, authorizes union members to commence suit in a federal district court to enjoin any infringement of the rights guaranteed by section 101.

1. At issue in this proceeding is the validity of two separate restrictions upon the election process imposed by the union's constitution and by-laws: (1) the restriction that no member may nominate for office anyone other than himself; and (2) the restriction that no one may be an officer—nor, hence, a nominee for office—who does not satisfy the stated qualifications. The decision below was purportedly based, not on either of those restrictions standing alone, but upon their "combined effect." We submit, to the contrary, that the validity of each restriction presents an entirely separate question and that their "combined effect" adds nothing to the case and supplies no added ground for challenging them. It is evident, moreover, that respondents' real complaint goes only to

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[1] This was the explanation given by Senator McClellan at the time he proposed an amendment embodying the new title. 2 *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, 1103. This history, prepared by the National Labor Relations Board, will be cited herein as "*Leg. Hist.*"

the eligibility requirements and not to the self-nomination restriction.

Respondents sought to nominate themselves for office, but were excluded from the ballot because they were not qualified to be officers under the Association's eligibility requirements. It is that action of which they complain. But that action was based solely on their disability to be officers, not on their inability as nominators to place in nomination the names they offered (their own). Respondents did not seek to nominate anyone other than themselves, and they do not complain of the inability of someone else to nominate them. So far as the rules governing the offering of names in nomination go, respondents were in no way restricted from doing what they wanted to do—to wit, to nominate themselves, the very thing the self-nomination rule explicitly permits. The ruling of which they complain is that they were not qualified to be *nominees*, regardless of how or by whom their names were sought to be placed in nomination. It is, in short, only as nominees, not as nominators, that they were held to be disqualified, and it is only of the restrictions on nominees—*i.e.*, the eligibility requirements—that they can complain. The validity of the restrictions on the right to nominate would be raised only if they had sought to nominate, not themselves, but someone else.

2. Despite our belief that it is only the eligibility requirements that are really in issue in this case, we will consider separately the validity under Section 101(a)(1) of (a) the restriction of the right to nomi-

nate to nominating oneself and (b) the restrictions on the right to be an officer.

a. Although we doubt that the court need reach the question, it is our view that the by-law allowing each member to put himself in nomination but not allowing any member to nominate anyone else does not violate Section 101(a)(1). That section does, to be sure, deal with rights to nominate and thus with the subject matter of the by-law. All that it provides, however, is that "Every member * * * shall have *equal* rights * * * to nominate candidates" (emphasis added). It is, by its terms, simply a guarantee of nondiscrimination, of even-handedness, and does not purport to define or guarantee any particular substantive right to nominate. Its purpose is simply to assure that whatever rights to nominate are afforded by the union will be made available equally to all members. Any other interpretation would, as petitioner's brief explains (Pet. Br. 13–24), conflict with the plain words of the statute, the relationship between Titles I and IV, and the legislative history of these provisions.[3]

In this case there was plainly no discrimination against respondents in the rule denying to them the

[3] See, *e.g.*, Senator Kennedy's analysis of Section 101(a)(1) as finally adopted (2 Leg. Hist. 1259): "Section 101(a)(1): Asserts the right of each member of a labor organization to be considered equally and to enjoy identical privileges within the organization to nominate candidates, vote in union elections, attend membership meetings, and participate in the deliberations of the organization. The rights protected by this subsection are circumscribed by the right of the organization to establish for itself reasonable rules in its own constitution and bylaws."

right to nominate for office persons other than themselves, for no other member of the union had any different or greater right.

The substance of the matter, of course, is that nomination in the usual sense is not part of the Association's electoral process. In substance anyone who wishes to stand for election may appear on the ballot, provided that he meets the qualifications for the office. No one requires nomination in the usual sense; and therefore no requirements for nominators are set forth. To speak of discrimination in the right to nominate, in these circumstances, is simply a confusion of terms.

b. As we have said, respondents' real complaint is with the requirements for eligibility to be an officer, which they contend are unreasonably restrictive. However restrictive those requirements may be, they cannot violate Section 101(a)(1) for the simple reason that that provision in no way deals with rights to be an officer or a candidate. It assures equality only in the right "to nominate candidates," and the right to be a nominator and the right to be a nominee are surely different things.

While discrimination as to the right to make nominations may be challenged under Section 101(a)(1), the reasonableness of the qualifications required of officers can in our view be challenged only in a post-election action commenced by the Secretary of Labor under Title IV of the Act. *Robins* v. *Barback*, 325 F. 2d 929 (2d Cir.); *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (3d Cir.), certiorari denied, 371 U.S. 823; and cases cited at page 29 of peti-

tioner's brief. Section 401(e) of the Act, enforceable by the Secretary, declares that "every member in good standing shall be eligible to be a candidate and to hold office (subject * * * to reasonable qualifications uniformly imposed)" and thus deals specifically with the matter of which respondents complain. Indeed, the Secretary has recently filed a complaint under Title IV of the Act challenging an election held by the Pacific Coast District of the Association, alleging that the eligibility and nomination restrictions involved here violate Section 401 of the Act. *Wirtz* v. *Pacific Coast District, National Marine Engineers Beneficial Association,* File No. 42388, N.D. Calif.

To hold that the reasonableness of officer qualifications can be challenged also under Section 101(a)(1) would produce an undesirable overlapping of remedies and would frustrate the purpose of Congress to center in the Secretary control over litigation involving the substantive rules under which union elections are conducted.[4] As the brief *amicus curiae* of the AFL–CIO points out (Br. 14–22), supervision of the litigation by the Secretary will promote uniformity in the regulation of elections, a uniformity which may be lost if every union member may take his dissatisfac-

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[4] The Secretary will generally have at his command greater resources and legal and investigative staff than are available to the average private litigant. In practice his participation will often mean that the court will have before it a fuller record upon which to decide these difficult issues concerning the reasonableness of union election procedures. Compare *McDonough* v. *Johnston*, 49 Labor Cas., para. 19,042, N.D. Ohio, June 2, 1964, with *Goldberg* v. *Amarillo General Drivers, Local Union No. 577*, 214 F. Supp. 74 (N.D. Tex).

tion with a particular eligibility qualification to the federal courts. Further, our construction reduces the extent of judicial involvement in the internal affairs of the unions and preserves maximum autonomy of these private organizations, since only post-election actions are authorized and then only where the Secretary finds the claims meritorious.

The construction of Section 101(a)(1) by the court of appeals would mean that these sensitive questions could be brought directly before the federal courts in pre-election actions with the result that all elections might be precluded for an extended period of time while litigation was resolved and appealed. Such an intent should not be attributed to a Congress which enacted this statute to require, not delay, elections and which took such pains to limit pre-election remedies.

In sum, Section 101(a)(1) guarantees equal rights to nominate and no more. The fact that the person a particular member wishes to nominate (whether himself or anyone else) is barred from holding office because of restrictive or unreasonable eligibility requirements does not give rise to a cause of action for violation of Section 101(a)(1). The complaint in such a case is with the reasonableness of the eligibility requirements and a remedy is available under Sections 401(e) and 402 of Title IV.

This construction of the statute gives meaningful content to Titles I and IV and eliminates the overlap which results from the construction adopted by the court of appeals. Further, it gives effect to the obvious congressional purpose to limit interference under the Act with the internal rules for union elections

to post-election actions initiated under the guidance and expert judgment of the Secretary of Labor.

We submit that the judgment below should be reversed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 17

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers Beneficial Association, AFL-CIO,

Petitioner,

—against—

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF

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JESSE M. CALHON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers Beneficial Association, AFL-CIO,

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—against—

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF

Question Presented

Whether a federal district court has jurisdiction, under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959, to enjoin the imposition of requirements which infringe the rights of members of a labor organization to nominate candidates in future elections of the labor organization?

Statement of the Case

1. The Proceedings Below.

Respondents, members of petitioner District No. 1, a local labor organization, bring suit pursuant to Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA"), 29 USC 412, to enjoin the imposition, in regard to future elections of District No. 1, of certain nominations requirements and eligibility requirements which effectively deprive respondents (and many other members of District No. 1 as well) of their rights to nominate candidates in elections of District No. 1.

The issue presented to this Court is whether a federal district court has jurisdiction over such an action.

The requirements which respondents complain of are as follows: first, every member of petitioner District No. 1 is prohibited from nominating any candidate other than himself for any office (Rec. 5) (i.e., he is limited to nominating himself only, and for one office only); second, all members who have not already served as full-time, paid officials of the union are prohibited from nominating themselves for the presidency of District No. 1 (Rec. 6); and third, all members who have not served 180 days of sea time or more during each of two of the three years immediately preceding the nominations are prohibited from nominating themselves for any office whatever (Rec. 5).

The result of these requirements is, of course, that respondents are totally deprived of their right to nomi-

nate candidates (Rec. 8). Respondents are first prohibited from nominating any candidate *other* than themselves, then prohibited from nominating themselves. Many, perhaps most, of respondents' fellow-members are deprived of their rights to the same extent (Rec. 8). And, of course, the overwhelming majority of respondents' fellow members are deprived (along with respondents) of their rights to nominate candidates for the presidency of petitioner District No. 1.

Accordingly, respondents brought suit, on their individual behalf and on behalf of their fellow members similarly situated, seeking to enjoin the carrying out of these requirements and deprivations of right in future elections. Respondents sought (and seek) an order directing petitioner District No. 1 to afford its members a fair opportunity to nominate candidates (Rec. 10) and to compel District No. 1 to afford its members such an opportunity before any future elections are held (Rec. 9-10). From the dismissal of their complaint by the district court for want of jurisdiction (Rec. 116) respondents appealed to the Second Circuit Court of Appeals. That Court unanimously reversed and remanded for further proceedings (Rec. 126). District No. 1 petitioned to this Court from that (non-final) judgment of the Court of Appeals, and this Court granted certiorari (Rec. 132).

Subsequent to the decision of the Second Circuit Court of Appeals, the district court inquired into the merits and issued a preliminary injunction, restraining District No. 1 from carrying out its nominations and eligibility requirements with regard to its 1963 elections, 224 F. Supp. 800. No appeal was taken

from that decision. But District No. 1 has ever since refused to hold an election, and plaintiffs' motion (brought in December 1963) to compel an election is still awaiting decision in the district court.

2. The Structure of the Union.

Petitioner District No. 1 is one of three "districts" comprising a National union, the Marine Engineers Beneficial Association (or MEBA). Until January 1, 1961, MEBA was composed of local unions, one in each port, and these local unions were self-governing, electing their own officers and adopting their own bylaws (Rec. 13-14). On January 1, 1961, local unions were abolished by MEBA and three "districts" were established in their stead. District No. 1 is the largest of these, having some 6000 members (Rec. 12). The officials of National MEBA appointed certain people as officers of District No. 1 and appointed also certain former local union officials to comprise a District Executive Committee to govern it (Rec. 12-14). These appointed officials then "promulgated" a set of bylaws to govern District No. 1 (i.e., they did not submit the bylaws to the membership for approval) (Rec. 14). The "promulgated" bylaws prohibit members from nominating any candidates other than themselves for office in District No. 1 (Rec. 14, 37).

Having been formed in 1961, District No. 1 (petitioner) could legally function without a general election of officers only until 1963 (i.e., for three years). Elections, therefore, were scheduled to be held in the fall of 1963; similarly, National MEBA scheduled its elections for the summer of 1963. On the eve of these

elections, in March 1963, National MEBA held a convention and amended its constitution so as to impose three new eligibility requirements with regard to district offices. The new requirements prohibited any member from being a candidate for the presidency of a district unless he had already been or was a full-time, paid official; they prohibited any member from being a candidate for any other district office unless he had served 180 days of sea time or more on MEBA-contracted vessels during each of two of the previous three years; and they prohibited any member from being a candidate for any district office unless he had been a member of MEBA for five years (Rec. 14-15, 70). The same requirements, together with the requirement of self-nomination, were imposed with regard to National office also (Rec. 43).

This action was brought by respondents some three weeks before ballots were scheduled to be sent to members with regard to the 1963 elections of District No. 1 (Rec. 15). Before bringing suit, respondents attempted to nominate the only candidates the by-laws allowed them to nominate (themselves). Their nominations were rejected by District No. 1's officials. Two of respondents then appealed, but the appeals were denied (Rec. 16-18). This action is brought, however, not to enforce those nominations (of themselves), and still less to protect respondents' rights to be candidates—but rather to protect respondents' and their fellow members' rights *to nominate* candidates (Rec. 10, 19).

Summary of Argument

The "Bill of Rights of Members of Labor Organizations," Title I of the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA"), guarantees to every member of a labor organization certain democratic rights. Among these is the equal right "to nominate candidates." Section 102 of that title authorizes any person whose rights under that title have been infringed to bring suit in a federal district court for appropriate injunctive or other relief. The present suit is brought under those provisions, to enjoin the imposition of certain restrictive requirements which infringe the rights of respondents, as members of District No. 1 (a local labor organization), to nominate candidates in District No. 1's elections.

Title I—the "Bill of Rights" title—was added to the original Kennedy-Ervin Labor Reform bill by the Senate, because the Senate was convinced that the bill as presented to it did not provide sufficient protection for union members' democratic rights. The original bill had been drafted with the view that existing remedies in State courts provided adequate *pre*-election relief for union members whose electoral rights were infringed, the drafters of the bill being concerned merely to add a *post*-election procedure, making it possible for a fraudulently conducted election to be upset and a new election held. The original bill thus provided dual or two-fold, "overlapping" relief: it permitted union members, in advance of a union election, to bring suit in State courts to enjoin the imposition of unfair eligibility require-

ments or other infringements of their democratic rights in regard to the future election; and it enabled a district court, upon the post-election suit of the Secretary of Labor, to set aside the results of an election already conducted in which such democratic rights had been infringed.

The *post*-election procedures created by the bill met little opposition in Congress, but the Senate determined that the existing State *pre*-election remedies were not adequate—and that, a federal *pre*-election remedy was necessary. For that reason, it added the "Bill of Rights of Members of Labor Organizations" to the Kennedy-Ervin bill, making it Title I thereof. The "Bill of Rights" provided just such a federal pre-election remedy, to complement the post-election remedy present in what is now Title IV of the LMRDA.

It is apparent that there is some "overlap" between the "Bill of Rights" title (Title I) and Title IV, in the sense that an infringement of one of the rights guaranteed in Title I, which may be enjoined by *pre*-election suit pursuant to that title, may also (assuming it is not enjoined) justify the setting aside of the election results after the election has been completed, pursuant to Title IV. Obviously, there is no contradiction in such "overlap;" rather the pre-election and post-election remedies complement each other.

District No. 1 contends, however, that there is a contradiction, and that union members must not bring suit to enjoin the infringement of their rights but must wait until the union election has been completed, and then seek to have the results set aside. All of

which is analogous to saying that a man must not protect himself against a criminal injury but must wait until the crime has been committed, in the hope that the District Attorney will thereafter bring a "post-crime" prosecution to remedy the injury. Congress did not intend such a ridiculous result; instead Congress explicitly and deliberately authorized union members to bring suit in advance of their union's elections to enjoin the infringement of their democratic rights with regard thereto.

POINT I

A District Court has jurisdiction to enjoin a labor organization from imposing upon its members unreasonably restrictive requirements which infringe the members' rights to nominate candidates in elections of the labor organization.

Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (referred to herein as the "LMRDA"), 29 USC 411(a)(1), guarantees to "every member of a labor organization" the equal right "to nominate candidates . . . subject to reasonable rules and regulations in such organization's constitution and bylaws."[1] Section 102 of the Act, 29 USC 412, authorizes any person whose rights un-

[1] The meaning of the "subject to" clause in Section 101(a)(1) was explained by Senator Cooper, one of the sponsors of the final version of the "Bill of Rights" that ultimately became Title I of the LMRDA, at 105 Cong. Rec. 6722, 105 Cong. Rec. (daily ed.) 6025, NLRB, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, p. 1234. (The latter authority is referred to hereinafter as Leg. Hist. of the LMRDA.) Cf. also *Young* v. *Hayes*, D.D.C. 1961, 195 F. Supp. 911.

der that section (or under any other provision of Title I) have been infringed to bring a civil action in a federal district court for "such relief (including injunctions) as may be appropriate."

The intent of these provisions is clear. The right guaranteed is not a mere right to equality in nominating, but an equal and substantive right to nominate; and the availability of an injunctive remedy for any infringement is explicitly specified.

The applicability of these provisions to the instant case is equally clear. Respondents, members of petitioner District No. 1 (a local labor organization), have been deprived *in toto* of their equal rights to nominate candidates by a network of restrictions upon the act of nomination itself and upon the eligibility of members for nomination. Together, these restrictions effectively prohibit respondents (and many other members of District No. 1) from nominating any candidate at all, for any office at all; and they prohibit virtually all of District No. 1's rank-and-file members (respondents included) from nominating any candidate at all for the chief office in District No. 1, its presidency.

Does it not follow that respondents are "person[s] whose rights secured by the provisions of [Title I of the LMRDA] have been infringed by [a] violation of [that] title," within the meaning of Section 102? And that a federal court therefore has jurisdiction, pursuant to Section 102, to grant the relief prayed for, by enjoining in future elections of District No. 1 the continued imposition of those restrictions that de-

prive the members of their rights to nominate candidates?

If so, then it must follow that the Court of Appeals for the Second Circuit was correct in ruling that the complaint herein alleged a violation of Section 101 (a)(1) and that federal jurisdiction existed under Section 102. For although Section 403 of the LMRDA may foreclose a court in the suit of a member from setting aside the results of an already completed election,[2] no provision of the LMRDA or of any other statute purports to divest the court of jurisdiction to enjoin the infringement of Title I rights in elections yet to be conducted.

POINT II

It was Congress's intention, in adopting a "Bill of Rights of Members of Labor Organizations," to provide federal, pre-election protection for the democratic rights of union members.

When Congress took under consideration the Kennedy-Ervin bill, the State courts were already providing a substantial measure of pre-election relief for infringement of the most important democratic rights of union members. In the debates upon the bill, and especially in the debates upon the proposed "Bill of

[2] 29 USC 483. The last sentence in that section provides that the remedy set forth in Title IV of the LMRDA shall be exclusive "for challenging an election *already conducted*" (emphasis supplied). But existing remedies by private suit with regard to elections yet to be conducted are expressly preserved by that section.

Rights" of union members (added to the bill by amendment as Title I thereof), the issue was raised as to whether Congress should provide a federal pre-election remedy for infringement of those fundamental rights, to supplement the State pre-election remedies already in existence and the federal post-election remedies provided by Title III of the bill (now Title IV of the LMRDA). That issue was resolved in the affirmative. The Senate superimposed a "Bill of Rights," providing a federal pre-election remedy for infringement of important democratic rights, upon the bill as reported to it. It is that federal pre-election remedy which is invoked in the instant action.

Congress's intent to provide a federal, pre-election remedy for the infringement of such fundamental democratic rights as the rights to vote and to nominate candidates is apparent from the plain language of Sections 101(a)(1) and 102 of the LMRDA. It is further apparent from the legislative history of the adoption of these sections and of the "Bill of Rights of Members of Labor Organizations,'" of which they are a part.

1. **The Background in State Law.**

Long before Congress decided to legislate for union democracy, the State courts developed an extensive experience in that field. A key lesson of that experience was the fundamental importance to union members of electoral rights, and of the right to have an election. As Justice Francis Bergan expressed it, ". . . the member denied the right to participate

[in an election] is denied a substantial right which is neither nebulous nor ephemeral."[3]

In the course of their experience in dealing with problems of union democracy, the State courts developed a practice of granting pre-election relief to union members who complained of specific infringements of their democratic rights, such as the denial of the members' rights to nominate candidates or to be candidates for union office. It was recognized that such relief should not wait until the election itself is conducted; that rather, the members are entitled to relief in advance of the election. As summarized by Professor Summers (on the basis of the study of the law of union democracy and election procedures in New York State, initiated by the Governor's Committee on Improper Labor and Management Practices and continued by the New York Department of Labor, pursuant to the instructions of the Legislature[4]), the courts' rationale has been as follows:

> "If members are forcibly prevented from making nominations, or if candidates are wrongfully stricken from the ballot, the election must be a nullity. To postpone the dispute would burden the union with carrying through a useless form."[5]

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[3] *Dusing* v. *Nuzzo*, N.Y. Sup. Ct. Ulster County, 1941, 177 Misc. 35; affd. as modif. 263 App. Div. 59. Cf. also *Irwin* v. *Possehl*, N.Y. Sup. Ct. Bronx County, 1932, 143 Misc. 855, 858; *Maineculf* v. *Robinson*, N.Y. Sup. Ct. Kings County, 1958, 19 Misc. 2d 230; *Di Bucci* v. *Uhrich*, Westchester County, 1959, 21 Misc. 2d 1069; *Beiso* v. *Robilotto*, Albany County, 1960, 26 Misc. 2d 137.

[4] Labor and Management Improper Practices Act, Chapter 451 of the Laws of 1959, Section 2.

[5] Clyde W. Summers, "Judicial Regulation of Union Elections," 70 Yale L.J. 1221, 1244 (1961). As to the study itself, cf. ibid, at 1223, note 12.

While the State courts have been willing and ready to grant pre-election relief to union members whose democratic electoral rights have been infringed, they have been less willing to set aside the results of an election after it has been conducted.[6] The distinction is based upon sound common sense: for the "post-election" remedy of setting the election results aside after the election has been completed may greatly inconvenience the union without helping the members whose rights have been infringed. Only the "pre-election" remedy of correcting the infringement befor the election takes place can provide adequate protection for the members without unduly burdening the union.[7]

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[6] Thus in *Ford* v. *Curran*, N.Y. Sup. Ct., Kings County, 1955, 36 LRRM 2407, 2409, n/o/r, an unsuccessful candidate in a union election brought suit after the election was over to set aside the results on the ground that the incumbent president had used the union newspaper to campaign for re-election. This would have been a sufficient basis for pre-election relief. But the court criticized the plaintiff because she had "made no attempt to have a court issue an injunction restraining the president from these acts," and it denied her post-election relief, saying "A person in her position could not sit back and await the outcome of an election and then come into this Court and get the extreme relief she seeks."

[7] Thus Professor Summers observes, "Lawyers who have been involved in these cases agree that preelection remedies are the only ones of practical value. Correction of defects prior to the voting gives the members that to which they are entitled—a fair and honest election in the first instance. It also protects the union from the instability of an unsettled election and the cost and disruption of a new election. Post-election remedies provide too little protection for the members and too much burden for the union." Clyde W. Summers, "Judicial Regulation of Union Elections," 70 Yale L.J. 1221, 1248 (1961).

2. The Kennedy-Ervin bill.

When Congress came to legislate for union democracy, it did so in the light of the experience of the State courts. Recognizing "the importance of free and democratic union elections,"[8] the Senate Committee sought to take up where the State courts had left off. The bill it submitted to the Senate specifically preserved the pre-election remedies developed by the State courts and sought to add to them a post-election remedy, administration of which it placed in the hands of the Secretary of Labor.[9] Thus it set up a dual protection for union members' democratic rights. As Senator Kennedy expressed it,

> "Prior to the day of an election an individual can sue in a State [court]. The day after an election the Secretary of Labor assumes jurisdiction.[10]

3. The "Bill of Rights of Members of Labor Organizations."

The original bill, therefore, entrusted pre-election remedies to the State courts. Had Congress believed that these State remedies were adequate it would never have added the "Bill of Rights of Members of Labor Organizations" to the bill as Title I thereof. But upon Senator McClellan's urging that Congress give union members "the tools they can use them-

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[8] S. Rept. 187, 86th Cong., 1st Sess. p. 80; Leg. Hist. of the LMRDA, p. 416.

[9] S. 155, Sec. 302; Leg. Hist. of the LMRDA, p. 516.

[10] Leg. Hist. of the LMRDA, p. 1112.

selves" to reform their unions[11]—"the tools with which the unions can be given back to them"[12]—the Senate determined to add such a "Bill of Rights" onto the bill, to provide federal, pre-election protection of the members' democratic rights. The "Bill of Rights" was written and re-written during the Senate's debate, its guarantees becoming more explicit and specific with each re-writing, and the final version of the "Bill of Rights" was approved by the Senate by the overwhelming vote of 77 to 14.[13] Early in the debate, Senator Kennedy contended that State pre-election remedies were adequate,[14] but the Senate overrode that view and guaranteed (in Section 101 of the LMRDA as ultimately adopted) specific federal rights of union members to nominate candidates, to vote in elections, and to express at union meetings their views upon candidates in the union election. A key provision in the "Bill of Rights" as adopted (now Section 102 of the LMRDA) made the members' electoral rights enforceable by pre-election suit on the part of the union members themselves. As Senator Kuchel, author of the final version of the "Bill of Rights" explained, "We believe that giving this type of right to the aggrieved employee member himself is in the interest of justice."[15]

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[11] Leg. Hist. of the LMRDA, p. 1103.

[12] Leg. Hist. of the LMRDA, p. 1104.

[13] Leg. Hist. of the LMRDA, p. 1239.

[14] Leg. Hist. of the LMRDA, 1108. Much of Senator Kennedy's argument was based upon the findings reported in an earlier article of Professor Summers. Cf. Leg. Hist. of the LMRDA, p. 1113.

[15] Leg. Hist. of the LMRDA, 1232.

4. The Structure of the LMRDA.

By superimposing the "Bill of Rights of Members of Labor Organizations" upon the Kennedy-Ervin bill (as Title I thereof), the Senate established federal pre-election protection, as well as post-election protection, for union members' democratic rights. Many rights are given both protections. Thus Title I of the LMRDA (the "Bill of Rights" title) guarantees to every member of a labor organization the rights to nominate candidates, to vote in elections of the labor organization,[16] and to express at meetings of the labor organization his views upon candidates in an election of the labor organization.[17] The exercise of these (Title I) rights is further protected against disciplinary reprisal by Section 609.[18] And, of course, pre-election relief for any infringement of these rights is available pursuant to Section 102 of the LMRDA.[19]

These very same rights are also guaranteed to every member of a union in good standing by Section 401(e) of the LMRDA,[20] and post-election relief for infringement of them is made available by Section 402.[21] Moreover, Section 401(e) also guarantees the exercise of these rights against disciplinary reprisal: it provides that every member in good standing shall have

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[16] Section 101(a)(1), 29 USC 411(a)(1).

[17] Section 101(a)(2), 29 USC 411(a)(2).

[18] 29 USC 529. *Cf. Salzhandler* v. *Caputo*, 2d Cir. 1963, 316 F.2d 445, cert. den. 375 US 476.

[19] 29 USC 412.

[20] 29 USC 481(e).

[21] 29 USC 482.

"the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof."

Quite obviously, the guarantees of Sections 101(a)(1) and (2) "overlap" those of Section 401(e), and vice versa. The two sets of guarantees complement each other—pre-election relief is available to remedy rights guaranteed in Section 101, while post-election relief is available to remedy the same rights as guaranteed in Section 401.

5. Petitioner's "Insulation" Argument.

It is the contention of petitioner District No. 1, on the other hand, that Section 101 and Section 401 contradict each other. Petitioner advances a rigid, compartmentalized view of the LMRDA, according to which the subject matter of each democratic right would be "insulated" by one or the other of the two sections. Either the right, say, to vote is the private property of Section 101—or it is the private property of Section 401. And all trespassers are warned to keep off.

This view of petitioner's raises some interesting questions. By which title would, say, the right to express views in support of a candidate be "insulated?" Can that right be protected in advance of an election by a member's suit, pursuant to Sections 102 and 609, or must the member whose right has been infringed wait until after the election is completed and then seek to have the election results

set aside? The thrust of petitioner's argument would suggest that the subject matter of that right also is "insulated" by Section 401(e)—and that the protections which Sections 102 and 609 appear to provide with regard to it are in fact nullities.

Curiously, petitioner offers no substantial reasons to explain why it should not be the other way around —why the subject matter of all rights guaranteed by Section 101 should not be the "private property" of Section 101, thus rendering most of Section 401(e) a nullity. But obviously this possibility does not serve the present interests of petitioner's incumbent officials, so they avoid adverting to it.[22]

The correct view, however, is that Congress did not intend to make any right the "private property" of

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[22] An additional reason may be petitioner's (and the amicus, AFL-CIO's) apparent assumption that the Secretary of Labor, the official charged with enforcing Title IV of the LMRDA, is politically captive to the union bureaucracy. That this assumption may have substance is suggested by the Secretary's behavior involving the 1963 elections of National MEBA (with which petitioner is affiliated). National imposes precisely the same nominations and eligibility requirements with regard to its offices as District No. 1 imposes with regard to its presidency: i.e., no member may nominate a candidate other than himself for any National office, and no member who has not already served as a full-time, paid official may be a candidate for any National office (Rec. 43). Three members of National, including the unsalaried Treasurer of the former New York Local 33 (whose nomination of himself for Secretary-Treasurer of National had been rejected on the ground that his had not been a full-time, paid office), complained to the Secretary concerning the imposition of these requirements in the 1963 National election. The Secretary refused, however (without offering any intelligible reasons for his refusal), to carry out his mandate under Section 402 of the Act. Instead, the Secretary brought suit with regard to the maverick Pacific Coast District of the union (cf. page 8 of the brief of the United States). One is forced to conjecture as to the reasons for his choice.

any one section or title of the LMRDA. Congress intended by Title IV of the LMRDA to provide post-election protection for certain democratic rights of union members, and it intended by Title I to provide pre-election protection for many of the same rights. The good sense of Congress's intent is so patently obvious as to reduce petitioner's "insulation" argument to absurdity.

POINT III

The right to nominate candidates includes the right to nominate candidates who will be accorded recognition as candidates.

Supplementary to its "insulation" argument, petitioner District No. 1 advances the notion that respondents weren't *really* deprived of their rights to nominate candidates. Respondents, petitioner says, were allowed to make nominations (of themselves); "It was only after they exercised their equal right of nomination," says petitioner, "that the eligibility rules of the Union came into play. . . ."[23] Those eligibility rules, of course, barred respondents from being candidates—and since District No. 1's nominations requirements prohibited respondents from nominating any candidates other than themselves, respondents were thus barred from nominating *any* candidates at all.

Not all members of District No. 1 were so-barred. The incumbent full-time, paid-officials were permitted to nominate themselves for office—even for the presi-

[23] Petitioner's brief, page 32.

dency of District No. 1. In this union, it would seem, some members are more equal than others.

Petitioner's denial that there has been an infringement is preposterous. This Court has held that a voter is oppressed in the exercise of his right to vote when his ballot (after he has cast it) is subjected to a fraudulent miscount, or when the ballot box is stuffed.[24] The rights to have one's vote counted—and to have one's nomination accepted and the nominee recognized as a candidate—are entitled to as much dignity as the right to drop a ballot in a box or to mail a nominations form in to the union headquarters.[25]

At the barest minimum, respondents were and are entitled to nominate *some* candidate who will be recognized as a candidate. If the right to nominate candidates means anything at all, it must mean at least that. But that is precisely what was denied and what is denied to respondents (and to most other rank-and-file members of District No. 1).

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[24] *United States* v. *Mosely*, 238 U.S. 383; *United States* v. *Saylor*, 322 U.S. 385. Compare: *Beckman* v. *Local No. 46*, 7th Cir. 1963, 314 F. 2d 848.

[25] *Gray* v. *Sanders*, 372 U.S. 368, 380. And Cf. *Gurton* v. *Manuti*, S.D.N.Y. 1964, 56 LRRM 2307 (n/o/r).

Conclusion

Respondents' complaint properly alleges that their rights to nominate candidates are infringed by various provisions in the bylaws and constitution governing petitioner District No. 1, and sets forth a claim for relief pursuant to Section 102 of the LMRDA. For that reason, the Second Circuit Court of Appeals was correct in ruling that the district court had jurisdiction over the cause, and in thereby reversing dismissal for want of jurisdictioin and remanding for further proceedings.

The judgment of the Second Circuit Court of Appeals should be affirmed.

Respectfully submitted

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 17

JESSE M. CALHOON, *et al.*,

Petitioners,

—v.—

RAYMOND H. HARVEY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

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BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

Interest of *Amicus*

The American Civil Liberties Union is a private, non-partisan organization engaging solely in the defense of civil liberties. It appears here *amicus curiae* by the consent of the parties.

Our concern in this case is that restrictions upon the conduct of union elections should not be insulated from effective challenge under Title I of the Labor-Management Reporting and Disclosure Act of 1959 by reason of the availability of partial, post-election remedies under Title IV. We take no position on the restraints themselves which the Court of Appeals held to have infringed Title I guarantees, when taken collectively. But we believe that the opportunity for pre-election challenge through private suit is essential if the rights granted by Title I are to have reality to the individual union member.

Question Presented

Whether a Federal District Court may assert jurisdiction in an action under Title I of the Labor-Management Reporting and Disclosure Act of 1959 where the conduct at issue may also be subject to regulation, in part, by the Secretary of Labor under Title IV of such Act?

Statement

Petitioners, respectively, are the President and the Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO, a labor organization representing licensed marine engineers. Respondents are three members of District No. 1 who brought an action against Petitioners in the District Court for the Southern District of New York under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the Act).[1]

On January 1, 1961, the National Marine Engineers' Beneficial Association (NMEBA) adopted a reorganization plan which created subordinate "District" organizations (one of which was District No. 1) comprised of regional groupings superseding and replacing its local unions at various ports (R. 32-33, 56). In the course of the reorganization and thereafter, the union's rules as to nomination of candidates and eligibility for union office were drastically revised.[2] Subsequently, each of the Respondents at-

[1] 29 U. S. C. § 412.

[2] These changes may be summarized as follows: (1) Under Article X of the District No. 1 bylaws, a member can only nominate himself for office (R. 25-26, 37) (at p. 18). (2) Under Article X, Section 9 of the amended NMEBA Constitution, only those non-officer members having had 180 days of employment on vessels covered by NMEBA contracts in each of two of the three years preceding nomination are eligible for nomination to District office; only

tempted to make nominations of candidates for union office in an election scheduled for a period commencing September 1, 1963. Each such nomination was unsuccessful because of the application of one or more of the new restrictions. Respondents thereafter filed an action against Petitioners alleging that their rights and privileges to nominate candidates under Section 101(a)(1) of the Act,[3] had been infringed and requesting, *inter alia*, an injunction to restrain the holding of the election and to direct the Petitioners to afford the members of District No. 1 a fair opportunity to nominate candidates (R. 9-10). The District Court granted Petitioners' cross-motion to dismiss finding that, except for the self-nomination requirement, the complaint protested qualifications upon eligibility for candidacy governed by Section 401(e) in Title IV of the Act[4] litigable only by post-election complaint with the Secretary of Labor (R. 114). The District Court further found that the self-nomination requirement, by itself, was a "reasonable" restriction upon the rights of members under the provisions of Section 101(a)(1) (R. 114).

The Second Circuit Court of Appeals reversed (R. 118-125). While not ruling upon the legitimacy of the self-nomination provision or the eligibility restrictions standing alone as possible violations of the "equal rights and privileges . . . to nominate candidates" protected by Section 101(a)(1), the court held that the combined effect of the self-nomination and eligibility rules was such an invalid infringement (R. 123-124).

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members who have previously served as a full-time, paid union officer are eligible for nomination to the office of District President; and only those who have been members of NMEBA for five consecutive years preceding nomination are eligible for any District office (R. 70).

[3] 29 U. S. C. § 411(a)(1).

[4] 29 U. S. C. § 481(e).

Summary of Argument

It is the position of the American Civil Liberties Union (ACLU) that the provisions and purposes of the "Bill of Rights" for union members contained in Title I of the Act would be, in good measure, frustrated if the procedure for post-election complaints contained in Title IV is superimposed as a bar to Title I relief. While the ACLU takes no position as to the reasonableness or unreasonableness, individually or collectively, of the restraints upon nomination to office imposed upon Respondents, it is of grave importance that the institution of inequitable restrictions not be insulated from effective challenge under Section 102. Such insulation would inevitably occur, and the intent of Title I plainly fail of achievement, if the mere availability of partial, post-election remedies through administrative action under Title IV is held to divest a district court of jurisdiction in a Title I action.

The Act was the acknowledged product of more than a decade of a steadily increasing demand that the protections necessarily accorded unions as the collective bargaining representatives of employees must be matched to some degree by federal regulation assuring that a union is the instrument, not the master, of its members. The place of union elections, in this regard, is paramount; it is membership control of the selection and rejection of union officers above all else which can insure the status of the union as a democratic institution. The experience of our state courts, before 1959 the only forum in which such rights could be tested, is testimony to that fact as well as to the logic that controls on union elections must, for effectiveness, be enforceable in the period preceding the balloting.

The Act was not only in response to a consensus that union democracy was necessary; its total scheme and the

history of the legislation in the making are voluble not mute reaffirmations of the Congressional conclusion that effective protections for union "democracy" are best assured by affording the individual member the opportunity to test any alleged bar to the full and free expression of membership desires. This premise is implicit in the progress and amendment of the controls originally proposed. It is unmistakable in the design of the finished product. The Act's progress through the Congress was initiated by a bill affording federal controls only in the post-election period and subject to the overriding authority of the Secretary of Labor in the pursuit of judicial relief against alleged wrongs. Its successful amendment was premised upon the inadequacy of such regulation and the need for individual rights enforceable at the individual's demand.

Murky as some aspects of the legislative history of the Act may be, in the instance of the interrelationship between Titles I and IV there can be little question of the intent of the Congress. Far from elevating Title IV administrative procedures under the control of the Secretary of Labor to a pre-emptive position in the protection of basic rights, the Congress directly and conspicuously emphasized the prime nature of the broad rights afforded by Title I. If, indeed, there is "overlap" in the safeguards accorded some membership rights resulting from mention in both Titles, it is plain that this was not to be at the expense of the broader protection clearly provided by Title I. A contrary conclusion would not only do violence to the evident scheme of the statute but would immeasurably dilute the strength of the provisions of Title I.

The Congress was undeniably aware of the difficulties which would beset union administration if no election could be regarded as immune from a succession of private suits seeking to overturn its results; post-election proceedings

challenging the validity of the election and its results are plainly less available as harassment techniques if subject to the control of the Secretary of Labor. Conversely, pre-election challenges through private suit under Section 102 are essential if the rights granted in Section 101(a) are to have reality to the individual union member. While an election may be subsequently invalidated after time consuming proceedings under Title IV, post-election relief is frequently of limited value to the complainant. Such relief is available only after exhaustion of intra-union remedies and then at the decision of the Secretary of Labor rather than the individual who is aggrieved. The interim period, for the protesting member, must be spent with a hostile administration in full control of union offices and authority with full opportunity to consolidate its strength and position. Most importantly, the provisions under which the Secretary is authorized to seek judicial relief carefully limit the scope of inquiry of the court in any post-election challenge.

The Act plainly affords both pre-election and post-election relief. For it to do so effectively, the availability of the former must not be sacrificed to an undesigned and unsatisfactory primacy of the latter. If Title I rights are so narrowed, most election abuses will, in practical terms, be immunized from effective criticism and control.

ARGUMENT

The District Court was not deprived of jurisdiction under Section 102 to remedy an alleged breach of the right of union members to nominate candidates merely because the conduct constituting such an alleged breach might also be subject to post-election challenge under Title IV.

A. *The Union Election Abuses Which the Act Was Designed to Eliminate Require Pre-Election Judicial Relief.*

One of the basic findings of the McClellan Committee was the need for federal legislation "to ensure union democracy" and the Act was an acknowledged response to that finding.[5] The critical, inescapable place of union elections in the attainment of that end is patent as the Senate sponsors of the proposed legislation were aware. "It needs no argument to demonstrate the importance of free and democratic union elections."[6] Accordingly, twelve of the forty-five stated purposes of the proposed legislation were directly concerned with safeguarding election procedures and a substantial portion of the statute as enacted were directed to this end.

The existence of abuses in the election processes of some unions and the difficulties of regulation in the area were well known to the Congress. The McClellan Committee "found time and again the denial of the right to vote, the denial of the right to work, the denial of the right to have a voice, the denial of the basic human rights on which our very freedom was founded."[7] The Committee at numerous points re-

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[5] S. Rep. 187, 86th Cong. 1st Sess. p. 2.

[6] *Id.* at 20.

[7] NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1103. This source is hereinafter referred to as Leg. Hist. of LMRDA.

ceived testimony regarding the means and devices used to secure illegitimate control of union offices through manipulation of voting and nominating rules and procedures.[8] The possibilities of abuse of membership rights in this manner are plain. As an acknowledged authority in this area has commented:

> "Basic rights in the nominating process often depend upon isolated and seemingly remote details. Rejecting a nomination for lack of a second, after hasty closing of the nominations, may be but an excuse to eliminate unwanted opposition. Rival candidates may be declared disqualified for delinquency in dues even though their dues book shows them fully paid up, or employers may be induced to manipulate check-offs so as to disqualify potential opponents to the administration. The impact of detailed rules may be even more subtle. Requiring candidates to declare their candidacy four months prior to the nomination meeting may deter opposition where the union holds effective control over job opportunities, for it compels potential insurgents to expose themselves to the hazards of punitive action. Requiring candidates for top office to have served previously on the executive board seriously handicaps an opposition group in replacing the incumbents unless it can inspire a 'palace revolt.' These disputes do not concern mere technicalities but involve the right of the individual to run for office and, more importantly, the

[8] Illustrations of these practices can be readily found in the reports of the the hearings. See *Hearings Before Select Committee on Improper Activities in the Labor or Management Field*, 85th Cong. 1st Sess. at pp. 1946, 1744, 1835, 5406 (manipulation of dues payments to control voting), 4537-4556, 5581, 14881-14883, 14967, 14409, 13788-91, 13674 (eligibility procedures manipulated to disqualify all but favorite group for office), 5366, 5368, 10406-7, 11594-6 (nomination procedures misused).

right of members to select leaders of their own choosing."[9]

An exhaustive survey of the experience of the state courts in correcting these and related abuses has shown that the great majority of state suits to restrain improper conduct are brought before the voting occurs, a process that protects both the member from irreparable injury and the union from the costs and pressures implicit in the prospect of renewed campaigns and multiple elections.[10] By the time federal legislation became a reality it had been established that:

> "The primary legal protection now given by state courts against improper elections comes before and not after the election. If the nominating procedures are abused, campaigning improperly conducted, candidates wrongfully disqualified, or members classified as ineligible to vote, legal action can be brought and corrections compelled before the election is held. This is the point at which legal protection is most commonly sought and is most effective."[11]

B. *Title I of the Act Was Specifically Designed to Provide Such Pre-Election Relief.*

The initial approach of the 1959 legislation to the protection of election procedures against abuse was a significantly limited one. As reported to the Senate, the Kennedy-Ervin bill established certain regulations as to the frequency and conduct of union elections. Enforcement of these regula-

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[9] Summers, Judicial Regulation of Union Elections, 70 Yale L. J. 1221, 1225 (1961) (citations omitted).

[10] *Id.* at 1244.

[11] Summers, The Role of Legislation in Internal Union Affairs, Proceedings of Eleventh Annual Meeting of Industrial Relations Research Assoc., pp. 260, 269 (1959).

tions was to be accomplished through complaint to the Secretary of Labor, after exhaustion of intra-union remedies, with the Secretary having sole authority to bring a civil action to set aside an invalid election. The bill went on to add, significantly, that "Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections *prior to the conduct thereof* shall not be affected by the provisions of this title" (emphasis supplied) but that "The remedy provided by this title for challenging an election already conducted shall be exclusive." [12]

As presented to the Senate, accordingly, the proposed legislation did create federal rights as to election procedures. These rights, however, were significantly limited in scope and design. First, the rights created were judicially enforceable by the Secretary of Labor and not the member. Second, the remedy was specifically post-election in character. Third, the only provision for pre-election remedial action was through state suit to enforce the provisions of the union's constitution and bylaws.[13] It was precisely this

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[12] S. 1555, 86th Cong. 1st Sess. (1959) § 303.

[13] The majority report accompanying S. 1555 made it plain that administrative control over the enforcement of the rights granted, coupled with the exclusiveness of the federal remedy once an election had been held, was deliberately chosen to afford a uniform policy for regulation and a safeguard against too frequent elections. S. Rept. 187 at 417-18. Senator Kennedy, as one of the bill's sponsors, stressed the pre-emption of the federal control in post-election proceedings and the reliance of state controls in pre-election challenges.

> "In the case of elections we preempt action for the Federal Government after the election is held. A suit may be filed in a State court prior to an election. The Federal Government takes preemption after an election. We have attempted to exercise Federal rights in those areas where the Federal Government can best do the job and have attempted to provide for State preemption in the areas where the State can do it best. I cannot give a better example than to cite the case of union elec-

issue of the narrowness of the federal rights and the inadequacy of pre-election suits in state courts to preserve and protect the membership against abuses of election procedures, that was attacked in the course of the debate as to acceptance of the McClellan amendment inserting a bill of rights as Title I of the legislation. The McClellan amendment, as originally debated and adopted, stated a number of broad membership rights, including that of "identical voting rights." Enforcement was to be by the Secretary of Labor through actions in federal courts including applications for injunctions to restrain violations and compel compliance.[14] In opposing the amendment, the proponents of the Kennedy-Ervin bill as reported stressed the position that the rights thus conferred were better protected by "existing State law, by the provisions of the pending bill, and by Taft-Hartley law which is now in effect";[15] those successfully supporting the bill of rights amendment made it plain that "the remedy [the Kennedy-Ervin bill] . . . proposes does not begin to deal with the enormity of the situation which has been disclosed by the McClellan committee."[16]

Acceptance of the McClellan amendment establishing a Title I Bill of Rights is conclusive evidence that the Congress did not consider federal regulation limited to post-election judicial enforcement to be adequate. The Kuchel amendment, thereafter, reframed the statement of the rights protected by Title I in language substantially similar to

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tions. Prior to the day of an election an individual can sue in a State. The day after an election the Secretary of Labor assumes jurisdiction." Leg. Hist. of LMRDA, p. 1112.

[14] Leg. Hist. of LMRDA, p. 1102.

[15] *Id.* at 1108. Statement by Senator Kennedy.

[16] *Id.* at 1114. Statement by Senator Holland.

that of the bill as finally enacted. While the general guarantee of "equal rights and privileges within such organization" was replaced by the enumeration of specific guarantees including those of nomination of candidates, voting, and attendance at meetings, the proponents of the Kuchel amendment clearly accepted the McClellan premise that Title I was needed to afford enforcement of federal rights at all times and not merely through post-election procedures. This is shown most clearly in the vital departure in the Kuchel amendment from the enforcement scheme of the original McClellan version. As stated by Senator Kuchel, in proposing the new Section 102 individual enforcement provision:

> "The amendment of the Senator from Arkansas provided that the Secretary of Labor might, on behalf of the injured or aggrieved member, have the right to litigate the alleged grievance and to seek an injunction or other relief. We believe that giving this type of right to the aggrieved employee member himself is in the interest of justice, and therefore we propose to eliminate from the bill the right of the Secretary of Labor to sue in his behalf." [17]

The effect and intent of this major change in the structure of the statute was made even more evident by the action of the Senate, after passage of the Kuchel amendment, in further amending the provisions of Title IV to allow a candidate for union office to bring a private suit in federal district court in order to enforce a pre-election right to fair distribution of campaign literature.[18] The over-all intention to make full and complete pre-election relief available to the individual member is plain.

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[17] Leg. Hist. of LMRDA, p. 1232.

[18] Leg. Hist. of LMRDA, pp. 1240-42.

It has been observed that the legislative history of the Act is complex, confusing and clouded. This may well be true as to the interpretation of individual provisions in an amalgam of seven titles seeking to regulate a vast array of problems. The total scheme of the federal protection which the Congress sought to create in the area of union elections, however, comes through with remarkable clarity. Title I grants broad guarantees, including equal rights and privileges to nominate and vote, to the individual member and makes them judicially enforceable at his individual option. Title IV sets forth detailed rights and regulations in the area of elections with heavy emphasis upon the rights of candidates to union offices. These Title IV rights, it should be emphasized, include that of "Adequate safeguards to insure a fair election" including "the right of any candidate to have an observer at the polls and at the counting of the ballots."[19] These rights can be enforced in pre-election judicial proceedings by the individual as stressed by [then] Senator Kennedy in the debates.[20] Once the election has been held, however, enforcement is placed within the control of the Secretary of Labor in view of the additional considerations attendant as to ouster of an apparently elected union administration. The design of the statutory protection thus afforded accomplishes the broad, pre- and post-election coverage found wanting in the original bill.

C. *The Intent of Title I Would Be Frustrated Under the District Court's Jurisdictional View.*

The premise of the district court was that the Act creates two sets of federal rights as to elections. These separate rights are to be separately enforceable and are, to a large extent, mutually exclusive. One set of such rights is em-

[19] 29 U. S. C. § 481(c).

[20] Note 13, *supra*.

bodied in Title IV and the view of the district court was that, with minor exceptions, such rights can *only* be enforced in post-election proceedings by the Secretary of Labor. As to Title I, the specific rights mentioned therein can be enforced by individuals in pre-election proceedings except to the extent that they touch upon any matter also covered by Title IV. The same view has found acceptance in some other lower courts.[21] As acknowledged by the Second Circuit Court of Appeals, however, in reversing the dismissal of this action, the dichotomy thus posed with its rigid and narrow view of the rights guaranteed by the Act, cannot be sustained without clearly frustrating the Congressional intent.

The issue of the relationship of the rights granted in Title I and Title IV can be framed in two considerably different postures. The first, and broadest, is whether Title I furnishes a jurisdictional base in Section 102 for a private pre-election suit to sustain rights and rules set forth in Title IV. The second, and narrower, is the issue precisely presented in the case at bar, i.e., in adjudicating a Section 102 complaint based upon an alleged violation of Section 101(a)(1) is the court foreclosed from consideration of the impact of conduct otherwise regulated by Title IV?

The position that Title IV furnishes federal substantive law governing the conduct of union elections which may be

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[21] The approach has been taken in two distinctly different lines of cases. The first of these is where the complaint is found to attempt to utilize § 102 as the jurisdictional base for contesting actions which are, basically, violations of Title IV. *Johnson* v. *San Diego Waiters & Bartenders Union*, 190 F. Supp. 444 (SD Calif. SD 1961); *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (3rd Cir. 1962), *cert. denied*, 371 U. S. 823. The second is where, as here, the alleged violation of Title I includes actions by the union which might otherwise be subject to Title IV. Cf. *Robins* v. *Rarback*, 325 F. 2d 929 (2d Cir. 1963); but see *Beckman* v. *Local 46, Int'l Assn. of Bridge Workers*, 314 F. 2d 848 (7th Cir. 1963).

utilized either in a pre-election suit by the individual or in a post-election suit by the Secretary of Labor has much to recommend it in the structure and background of the Act. Statutes "must be read in the light of the mischief to be corrected and the end to be attained."[22] There can be no question that Congress found serious "mischief" to be corrected in the conduct of union elections. Congress patently rejected the Kennedy-Ervin concept of limiting federal rights to post-election enforcement through the Secretary of Labor. That was the decision plainly posed and answered in the adoption of the Title I Bill of Rights amendments. The addition of the Bill of Rights was specifically couched on the inadequacy of the Kennedy-Ervin approach granting state remedies in the pre-election period and exclusively federal control through the Secretary of Labor in the post-election period. The addition of the Bill of Rights and the provision for suits by individuals in Section 102, accordingly, could have only two possible meanings. Either Congress intended to create only limited federal pre-election rights under Title I with the state-federal division remaining as to any of the substantive provisions of Title IV, or Congress intended full implementation of such federal rights in actions both before and after the election is held.

The former view bristles with illogic in view of the patent Congressional interest in expansion of membership rights. It would foreclose any enforcement of the federal rules for elections set forth in Title IV except by the Secretary of Labor *after* the election had been held. True, pre-election actions in state courts would remain available. Yet Section 403 provides that:

> "No labor organization shall be required by law to conduct elections of officers with greater frequency or

[22] *Warner* v. *Goltra*, 293 U. S. 155, 158 (1934).

> in a different form or manner than is required by its own constitution or by-laws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and by-laws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

Where the complained of conduct, accordingly, is consistent with the union's constitution and bylaws although flatly in violation of Title IV rules, the aggrieved member would be stripped of any pre-election relief. As has been commented:

> "It would be strange, indeed, to find that Congress intended that deviations from the union's constitution would be subject to more effective sanctions than violations of congressionally created rights, and that those rights which were deemed so basic as to be prescribed by statute were to be enforced only by a procedure which Congress considered inadequate."[23]

Indeed, under this approach the only federal right in Title IV which could be enforced by a pre-election suit of an individual would be that of fair distribution of campaign literature for which specific authorization is found in Section 401(c).

> "It would be strange to find that a candidate could have a pre-election remedy to enforce his right to mail campaign literature, but no such remedy to enforce his statutory right to be a candidate. The senators mani-

[23] Summers, Pre-emption and the Labor Reform Act—Dual Rights and Remedies, 22 Ohio St. L. J. 119, 137.

fested considerable confusion in this area, but they did not manifest a compelling desire for such whimsy." [24]

Whimsy is an apt description of the results of a theory which makes the broad guarantee in 401(c) of "adequate safeguards to insure a fair election" unenforceable while affording judicial sanctions for breach of only one of many rules designed to assure such fairness.

An additional factor of consequence is, of course, the fact that post-election judicial enforcement of Title IV rights is severely restricted as to the scope of review. It is only when the court finds that the election was not held within the time limits prescribed by Section 401 or that the violation of that section "may have affected the outcome of an election," that it is authorized to void the results of the balloting. The breach of Title IV rights, accordingly, insofar as post-election review is concerned, is subject to remedy only when there is some assurance that it affected the end result of the election, a finding which might be extremely difficult to sustain as to even open violations of such Title IV requirements as the presence of observers, the inspection of membership lists and, very possibly, the right to be a candidate.

Under the second view, however, that Congress intended full implementation of membership rights, these difficulties are resolved. If a federal right guaranteed by Title IV bearing upon the fairness of an election is infringed, the individual member may, if he wishes, test the matter in a pre-election suit. If his complaint is valid, the matter will be resolved without serious disruption of union affairs. The efficacy of such pre-election remedies has been amply demonstrated by the experience of our state courts in the enforcement of the union's constitutional provisions as to

[24] *Id.* at 138, n. 89.

elections; it would be equally effective as to enforcement of the new federal rights. Should, as may frequently be the case, the individual be unable or undesirous of making such a pre-election challenge, the more limited and carefully supervised remedy for the post-election complaint will be available.

The interrelationship of Titles I and IV, however, in the present instance, need not be determined on the broad issue just discussed. The complaint, here, was clearly grounded upon an alleged violation of the guarantee of equal rights and privileges to nominate candidates granted by Section 101(a)(1). The issue may therefore be restricted to the question whether, in determining if there was an infringement of equal rights and privileges to nominate, the district court can examine the impact of requirements as to eligibility for office which were alleged to be part of a total pattern of forestalling the right to nominate. In short, in a Title I suit, is the court foreclosed from consideration of matters which could be the subject of post-election regulation under Title IV?

In the determination of this narrower issue, of course, the considerations which would impel acceptance of pre-election suits to enforce rights found only in Title IV are equally applicable. The consequences, however, of the "exclusionary" view taken by the district court herein are even more objectionable and the basis of the approach even more untenable as a construction of the statute than in the case of a suit alleging only violations of Title IV rights. This view—that no rule which could be the subject of Title IV post-election procedures can be considered in the determination of whether a right granted by Title I has been denied—would plainly reduce the guarantees of Section 101(a)(1) to ineffectuality. The promise of equal rights and privileges "to nominate candidates, to vote in elections

or referendums . . . to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings" can hardly be met when the consideration of their breach must exclude the detailed restrictions attempting to establish democratic rights in the election area contained in Title IV. The Congress which rejected the post-election controls of Title IV as inadequate, which specifically labored to provide pre-election relief, which stressed, indeed, that the rights specifically named in Title I were not to be read as *excluding* others, would be held to have intended nothing more than minimal protection against a handful of abuses. The suggested subordination of Title I to Title IV, of pre-election relief to post-election relief, of individual suits to administration control, of the broader right to the narrower is particularly incredible in the light of the legislative history. That history is in every respect one of the Congress moving in precisely the opposite direction to that taken by the district court; of deliberations commencing with a bill providing only limited, post-election controls and ending with an Act deliberately incorporating the contrary.

Should the view taken by the district court be sustained, effective relief in the area of election abuses will become substantially futile. As the experience of the state courts has shown, it is only pre-election relief which can be meaningful in most instances of abuses. Yet such relief will be denied the individual union member unless he is contesting an open, naked infringement of his right to nominate or vote unconnected with any other election procedure regulated by Title IV. Further, despite the clear statement of Section 101(b) that "Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force and effect," the opposite situation will prevail. A union constitu-

tion imposing indirect restrictions upon the right to nominate, for example, will be immune from challenge to the extent it utilizes procedures such as eligibility, regulated by Title IV. It will be immune from contest under Title I under the pre-emptive view taken by the district court here and it will be immune from state court challenge because of the restrictions of Section 403. This, although "The whole structure of the statute warns against an easy inference of exclusive remedies, particularly where this may leave a member with no effective remedy." [25]

As has been aptly summarized,

> ". . . the federal courts seem reluctant to interpret the Bill of Rights and related provisions of the LMRDA in other than the narrowest and most literal fashion. This judicial cautiousness has both its advantages and its disadvantages. No one but the bitter enemies of unions would wish the wholesale regulation by courts of internal union affairs. . . .
>
> The disadvantages of a narrow and niggardly judicial approach to the Bill of Rights are equally apparent. We now know enough about the general problems of internal union administration to be able to pinpoint the principal abuses, especially in respect to the relationship between the union and its individual members. The draftsmanship of the LMRDA leaves much to be desired, and some provisions are maddeningly ambiguous or abstruse; yet the broad purposes of the Congress emerge with substantial clarity on most points. Were the courts to ignore all this and to seize every excuse to hold the Bill of Rights inapplicable to problems it was obviously designed to remedy, the consequences

[25] American Bar Association, Report of the Committee on Development of the Law of Union Administration and Procedure, Section of Labor Relations Law, 105 (1960).

would be not only a virtually dead-letter title in the law, but a profound sense of frustration and bitterness, to say nothing of cynicism, among those who hoped to preserve and revitalize a valuable institution by reforming it." [26]

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the Circuit Court of Appeals should be sustained.

Respectfully submitted,

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September 1964.

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[26] Aaron, The Union Member's Bill of Rights: First Two Years, Industrial Relations, Vol. 1, No. 2, 47 at 70-71, (1962).

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IN THE

Supreme Court of the United States

OCTOBER TERM 1964.

No. 17

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1 National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

against

RAYMOND H. HARVEY, *et al.*, individually and on behalf of all other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE.*

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BRIEF FOR WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE.*

Statement of Interest.

This brief *amicus curiae* is filed by the Workers Defense League (WDL) with the consent of the parties, as provided in Rule 42 of the Rules of this Court.

Background of Workers Defense League.

The WDL, an unincorporated voluntary membership association, was formed in 1936 under the leadership of Norman Thomas who remains as its Honorary President. It has a membership of several thousand persons through-

out the country who are active largely in the professions and in various fields of public endeavor. The largest component of its membership, next to that of private citizens with records of public service, are officers of labor unions and persons professionally involved in the labor movement.

The WDL was established in an effort to organize a permanent active group which would give aid and assistance, legal and otherwise, to workers, to labor unions and to individuals in all walks of life who had received, in specific remediable situations, something less than social justice. The necessity for its organization originally stemmed from the desire to consolidate the efforts of a number of Ad Hoc Committees which had been formed in the thirties in response to a variety of specific problems arising from one phase or another of the union organizing drives then being conducted.

The activities of the WDL have not, however, been rigidly circumscribed. It has seen its task as the defense of individual rights staked out by law and the establishment of new rights, not yet defined by law, which, as our society evolves, become necessary to the dignity and freedom of the individual. It strives to enlarge the area of individual choice and freedom by the most effective means available.

The WDL has worked closely through the years with a large number of other organizations in the fields of civil rights and liberties and in the labor movement. It has a pro-labor bias with emphasis on the welfare of the worker and justice for the individual.

Interest of Workers Defense League.

For some years prior to the Senate Investigation conducted under the chairmanship of Senator McClellan, the WDL was concerned with problems of corruption and mis-

management in certain unions. It was convinced that those evils were the direct consequence of the denial of basic democratic processes in the operation and structure of the unions involved. It took the position, for a variety of reasons, that unions bore a heavier obligation—a deeper responsibility—than other private organizations to maintain the substance of democracy in their activities. First, the union's power is the power to govern the working lives of those for whom it bargains and, like all governing power, should be exercised democratically. Secondly, unions should be democratic because the power which unions hold over the individual worker's livelihood and welfare is largely derived from government. Unions, in the exercise of powers derived from government, should maintain the same democratic standards as are required of government itself. Thirdly, unions should be democratic because their principal moral justification is that they introduce an element of democracy into the government of industry. They permit workers to have a substantial voice in determining the conditions under which they shall work. This high objective of industrial democracy can be fulfilled only if unions are themselves democratic and only to the extent that workers are allowed to participate in the selection of their leaders and in the determination of union policy do they become so governed.

Senator McClellan observed that his Committee had during the course of its investigations "found time and again the denial of the right to vote, the denial of the right to work, the denial of the right to have a voice, the denial of the basic human rights on which our very freedom was founded." (*Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, p. 1103; hereinafter referred to as *Leg. Hist.*) The WDL was long aware that

these evils existed in certain small segments of the labor movement. It was convinced that the only proper and ultimate response to them was the enforcement of genuine democracy in their operations and activities. Senator McClellan's observation that "if you would give to the individual members of the unions the tools with which to do it, they would pretty well clean house themselves" (*Leg. Hist.*, p. 1102), was an observation long held as a tenet by the WDL. The WDL therefore welcomed the addition of Title I to the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C., Sec. 411 ff.; hereinafter referred to as the Act). It welcomed it because it believed that its provisions, for the first time, made judicially enforceable, in a timely and effective manner, on the complaint of the individual member aggrieved, the infringement of basic democratic rights. The WDL, consequently, has a very special interest in the subject matter of the present litigation.

The WDL recognizes that for the overwhelming part unions are democratically conducted, designed for the benefit of their members and amply responsive to their interests. It has always had fraternal relationships with a large number of unions, with their elected officers and with the AFL-CIO itself. It therefore regrets that in the instant litigation it finds itself opposed, as a matter of principle, to the position taken by the AFL-CIO before this Court.

Since this Court will, in effect, in this litigation be setting the limits for the effectiveness of the Act as respects internal union democracy, the WDL urges that the decision of the Court of Appeals be affirmed—that, more generally stated, the widest scope possible be given to the vindication of the democratic rights of union members aggrieved by their infringement in offending unions under Title I of the

Act. The WDL is convinced that the welfare of the labor movement can best be maintained and enhanced by the vindication of the Respondents' position in this litigation.

Question Presented.

Whether a District Court has jurisdiction under Section 102 of the Act (29 U. S. C., Sec. 412) to provide a remedy *prior* to a union election where the union has so structured itself and has so formulated its governing statutes as to deprive a large portion of its membership in good standing of the right to nominate candidates for office in the union notwithstanding that the same conduct may *possibly* also be subject to remedy, *in part*, by the courts at the initiative of the Secretary of Labor, *subsequent* to the election, pursuant to Title IV of the Act?

Statement of Facts.

Respondents, members of District No. 1, National Marine Engineers' Beneficial Association (NMEBA), a labor organization having approximately 6,000 marine engineers as members, brought this action in the District Court for the Southern District of New York on their own behalf and on behalf of all other members similarly situated against District No. 1, its President and its Secretary-Treasurer. They sought to prevent the infringement of rights guaranteed by Section 101 (a) (1) of the Act and the Court's jurisdiction was predicated on Section 102 of the Act.

On January 1, 1961, NMEBA, by a referendum of its members, adopted a plan of reorganization which abolished its local unions, each of which had theretofore had jurisdiction over a single port. In place of these locals it

created subordinate district organizations, one of which was District No. 1. Each of these newly defined districts comprised certain regional groupings.

Prior to reorganization and under the National Constitution and local bylaws which then prevailed each member was guaranteed the right to nominate *any other member*, subject to certain reasonable eligibility requirements, for *any* local office and such nominations were called for, made and accepted at nomination meetings held in advance of local union elections. Nominations for national offices were called for, made and accepted at national conventions held in the year of elections, with each delegate to such conventions having the right to nominate *any other member* for national office subject to certain reasonable eligibility requirements. In the case of both national and local candidates for office prior to the reorganization the eligibility requirements were simply that a member be in good standing for a given period of years, the length of time being dependent on whether a national or local office was involved, and that, in effect, he have no conflicting interests to those of the union.

Following the reorganization, the District Executive Committee of District No. 1 *promulgated, without submitting to the membership for approval*, a series of by-laws which, with amendments similarly promulgated, drastically changed the mode of nomination of candidates for office. The effect of the changes may be summarized as follows: (1) A member could only nominate himself for office. He had no right to nominate any other member. (2) A member who had not already served as a full time paid union officer was required to have 180 days of employment on vessels covered by NMEBA contracts in each of two of the preceding three years in order to be permitted to nominate himself for District office. (3) Only members who had pre-

viously served as full time paid union officers were permitted to nominate themselves for District President. (4) Only those who had been members of NMEBA for five consecutive years prior to the attempt at self-nomination were permitted to nominate themselves for any District office. And (5) no member was permitted to nominate himself for more than one office in any one election.

In short, if the member did not desire to nominate himself for office or, even if he did, if he was "unqualified" to be a nominator under one or another of the newly promulgated restrictions on nominations, he could not nominate another for any office in the union whatsoever notwithstanding that he himself was a member in good standing.

The first election scheduled to be held following the promulgation of the new rules respecting nominations was to be held during the ninety day period commencing September 1, 1963. In the opinion of the WDL, as in the opinion of the Court of Appeals below, it is irrelevant to the issues presented to this Court for determination in this litigation, but it may be noted in passing, that each of the Respondents attempted to nominate himself as a candidate for office, but was "disqualified" by reason of one or another of the newly promulgated restrictions. Each of them, of course, was prohibited from nominating any other candidate for any office in the union whatsoever.

The Respondents prior to the scheduled election, commenced this action against the Petitioners alleging that their rights and privileges to nominate candidates for union office under Section 101 (a) (1) of the Act had been denied and requested that the court enjoin the scheduled election and direct the Petitioners to afford the Respondents, and all other members of District No. 1 similarly situated, a fair and equal opportunity to nominate candidates for office. The District Court granted the Petitioners' cross motion

to dismiss the complaint holding that (1) the limitation of nomination to self-nomination only was a reasonable restriction upon the rights of members of the union under Section 101 (a) (1) of the Act and (2) that the complaint in other respects, in essence, was a protest upon eligibility requirements for candidacy and as such was beyond relief under Title I of the Act. It held that the only relief available with respect to the latter phase of the complaint was pursuant to Title IV of the Act and remediable only *subsequent* to the election on a complaint which then might be filed by the Secretary of Labor in his discretion in the District Court.

The Court of Appeals reversed. It directed the issuance of the injunctive relief sought by the Petitioners and held that:

> "If the union's constitution and by laws had provided that only paid officials could make nominations for District President and that only incumbent officers or members with 180-day sea time in each of two of the three preceding years could make nominations for any other office, it could hardly be asserted that the members had 'equal rights and privileges * * * to nominate candidates.' Indeed, such a classification of union members would have been deemed invalid at common law, long before the LMRDA. See *Cameron* v. *International Alliance of Theatrical Stage Employees*, 118 N. J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935). Yet the combined effect of the eligibility requirements and the restriction to self-nomination is precisely that."

The Court of Appeals added:

> "We have no occasion now to consider whether such severe eligibility requirements as have here been imposed, especially as to the District Presidency, or the self-nomination restrictions, if either stood alone, would still infringe the guarantee of Sec. 101

(a)(1) to 'equal rights and privileges * * * to nominate candidates' or would only raise a question of denial of 'a reasonable opportunity * * * for the nomination of candidates' etc. under Sec. 401(e). The fact that plaintiffs sought unsuccessfully to nominate themselves and in that sense are complaining also as candidates does not blot out the main trust of their complaint—that the union has deprived members of the equal rights and privileges to nominate guaranteed by Sec. 101 (a) (1)."

Argument.

For a number of years prior to the enactment of the Act it had become fairly common knowledge that in a small minority of unions the absence or curtailment of democratic procedures had led to serious instances of mismanagement involving varying degrees of corruption and the perversion of the interests of their members. The American Civil Liberties Union in its historic study *Democracy in Labor Unions* (1952) brought informed public opinion to bear on the problem. The AFL and CIO were both then seriously concerned with its implications and subsequently, following the merger, took certain steps to rectify the situation. The Senate Investigation under the chairmanship of Senator McClellan demonstrated the enormous actual and potential opportunities for corruption which were involved and, likewise, established the close connection invariably existing between the evils disclosed and the autocratic character of the unions concerned. The testimony elicited by the McClellan Committee made remedial legislation imperative. The AFL-CIO itself supported the enactment of remedial legislation and it was, in fact, with its direct participation that the Kennedy-Ervin Bill was drafted. (McAdams, *Power and Politics in Labor Legislation*, p. 58 (1964)).

The problems requiring solution were both numerous and complex. No simple pat remedy was available for their rectification. This was especially the case because for the most part—the overwhelming part—unions were essentially democratic in their functioning and free of mismanagement and corruption. Their freely elected officials were largely men who brought to their duties a sense of obligation fiduciary in character. Moreover, the importance of union autonomy for union effectiveness was unquestioned. The Report which accompanied the revised Kennedy-Ervin Bill (S. 1555, 86th Cong., 1st Sess.) having observed that, "It needs no argument to demonstrate the importance of free and democratic union elections" (S. Rep. No. 187, 86th Cong., 1st Sess., p. 5; *Leg. Hist.*, p. 416), also acknowledged that:

> "A strong independent labor movement is a vital part of American institutions. The shocking abuses revealed by recent investigations have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine self-government within the labor movement nor to weaken unions in their role as the bargaining representative of employees." (S. Rep. No. 187, 86th Cong. 1st Sess., p. 5; *Leg. Hist.*, p. 401).

Congress had the difficult task, therefore, of formulating legislation which would not simultaneously curtail legitimate union activity while attempting to eliminate the patent evils which had been disclosed. The Senate Report outlined the considerations which had been adhered to in drafting the Kennedy-Ervin Bill:

> 1. . . . the desirability of minimum interference by Government in the internal affairs of any private

> organization . . . in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.
>
> 2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. . . . paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.
>
> 3. Remedies for the abuses should be direct. Where the law prescribes standards, sanctions for their violation should also be direct . . . the legislation should provide an administrative or judicial remedy appropriate for each specific problem." (S. Rep. No. 187, 86th Cong. 1st Sess., p. 7; *Leg. Hist.*, p. 403.)

The Kennedy-Ervin Bill was itself the product of an evolution over previously considered proposals: the Kennedy-Douglas-Ives Bill (S. 2888, 85th Cong. 1st Sess.) and the Kennedy-Ives Bill (S. 3974, 85th Cong. 1st Sess.) both of which had failed of enactment.

The House, too, had a variety of bills before it for consideration (McAdams, *Power and Politics in Labor Legislation*, p. 151 (1964)) of which the most important were the Landrum-Griffin Bills (H. R. 8400 and 8401, 86th Cong., 1st Sess.). Under the Landrum-Griffin Bills all enforcement procedures, both with respect to the equivalent of the Bill of Rights for labor which they contained and with respect to union elections generally, were given directly to the aggrieved members themselves who could apply to the District Court for relief. No provision was made for intervention through the Secretary of Labor or any other administrative agency.

The Kennedy-Ives Bill, on the other hand, set up a scheme of regulation of union elections which was roughly equivalent to Title IV of the Act in that it provided for procedures which were exclusively post-election in character and with relief obtainable only on the initiative of the Secretary of Labor. The rationale for lodging the power solely with the Secretary was predicated on the acknowledgement of the drastic nature of and the immensely destructive and demoralizing effects involved in the resort to post-election remedies. The Kennedy-Ives Bill contained no provision preserving rights or remedies under state law whether pre- or post-election in character. The proposed legislation would have pre-empted practically the entire field of internal union control both procedurally and substantively.

The Kennedy-Ervin Bill made only one substantial change over the scheme embodied in the Kennedy-Ives Bill: it did not seek to pre-empt the entire field of judicial control of internal union affairs. It provided that all remedies and procedures available to members under state law prior to the holding of the election itself would remain effective. Following the union election, however, the enforcement of judicial remedies was solely on the initiative of the Secretary of Labor and solely pursuant to the proposed legislation.

This pattern of protection proved totally unacceptable to Congress. It was felt that it did not "begin to deal with the enormity of the situation which had been disclosed by the McClellan committee." (*Leg. Hist.*, p. 1114). Congressional sentiment was overwhelmingly of the opinion that the Kennedy-Ervin Bill, as introduced, was much too weak; that it failed to set forth explicitly the rights of union members as against offending unions; that it was

the task of organized labor to police itself and that to accomplish that task union members had to have suitable remedies available for use on their own initiative, without the consent of any administrative agency, if such policing were to prove genuinely effective; that not only was there need for new federal rights to be set forth explicitly in the proposed legislation; but, likewise, for access to tribunals which had the remedies available to make those rights meaningful; that the time to rectify an evil involving a denial of fundamental democratic procedures in an election was immediately upon the appearance of the infringement of the right, not after that infringement had taken place and the obnoxious result a *fait accompli;* and that above all administrative interference by the Secretary of Labor should be kept to a minimum.

That this was the consensus of Congress is demonstrated not only by the enactment of Title I, but even more so by the marked changes in form and content of Title I when enacted over that which it appeared to be and contain when first proposed by Senator McClellan. Its history exhibits both a constant concern with increasing its effectiveness as a pre-election remedy and an equally constant concern to place in the hands of the aggrieved unionist the initiative and ability to obtain his own protection. As originally proposed it was limited in the scope of the rights conferred, it made no provision for remedying the infringements of conferred rights on the initiative of the member aggrieved but placed its enforcement, as in Title IV, solely in the discretion of the Secretary of Labor and it, likewise, made no provision for the preservation of pre-election rights and remedies under state law.

The opposition to the McClellan version was not merely technical. It was argued that the McClellan Amendment was not sweeping enough in the rights conferred, that it

placed the protection in the hands of the Secretary when the intention was to give initiative to the members themselves, that there should be only the minimum regulation necessary to accomplish the purposes of the legislation, and that it did not preserve existing state rights and remedies. The opposition to it, as originally proposed, was directed solely to those aspects of the amendment which impaired its effectiveness. The Kuchel substitute was drafted to obviate each of these objections. It ultimately became Title I and was designed at every point to increase the remedies available to the unionist, on his own initiative, as against any effort to defeat his democratic participation in union affairs. It received the support finally of even those who at first had been the staunchest opponents of a Bill of Rights, Senator Kennedy and the AFL-CIO. It ultimately received their support and the support of the overwhelming majority of Congress notwithstanding the explicit repeatedly expressed intentions of the sponsors of the Kuchel Amendment to create as powerful a weapon as possible in the exclusive control of the unionist aggrieved.

Both the supporters and the original opponents of the McClellan amendment initially decried its weaknesses. None rejected it in principle. Yet both supporters and opponents voted for the Kuchel substitute which actually contained explicit provisions for enforcement and effectiveness not even considered at the time of its original introduction. Congress, at every stage, manifested every intention to make Title I as powerful a weapon as it could design in the hands of the individual wronged.

The temper and intent of Congress may also be gauged from the fact that following the approval of the Kuchel Amendment it went on to amend Title IV so as to give a candidate for office whose right to distribute campaign

literature had been wrongfully infringed the right, on his own initiative, to bring an action in the District Court and there obtain the relief appropriate under the circumstances (29 U. S. C., Sec. 481 (c)).

At every point, consequently, Congress manifested its intention to give to the individual unionist aggrieved, prior to the election, every remedy required to prevent the curtailment of his democratic rights. The post-election petition to the Secretary of Labor was intended as a last resort after all else had failed. It was not intended, in effect, to be the beginning and the end of the struggle for democracy in unionism. That Congress was aware that the rights conferred by Title I would prove largely meaningless unless a remedy was provided for their effective enforcement before the damage was done is undoubted.

The efficacy of pre-election remedies has often been the subject of comment. Thus, Prof. Summers has written:

> "Study of the cases emphasizes the importance of judicial intervention before the voting. Lawyers who have been involved in these cases agree that pre-election remedies are the only ones of any practical value. Correction of defects prior to the voting gives the members that to which they are entitled—a fair and honest election in the first instance. It also protects the union from the instability of an unsettled election and the cost and disruption of a new election. Post-election remedies provide too little protection for the members and too much burden for the union." (*Judicial Regulation of Union Elections*, 70 Yale L. J., at p. 1248).

As part of the same study Prof. Summers has directed attention to the factors which have motivated the courts more readily to intervene before rather than after an election. His comments are:

> "The willingness of the courts to intervene before the election springs from several sources. First, correction of invalidating defects saves the union not only the costs of a new election, but more importantly, the internal disruption caused by the lack of legitimatized leadership and the turmoil of another and more bitter campaign. These costs are too great to risk on the chance, usually remote, that those injured by the defects may win and that intervention will became unnecessary. Second, correction of invalidating defects before the election simplifies the court's function and lightens its responsibilities. It saves the court from inquiring whether the defect provided the margin of victory, or even deciding whether that inquiry is relevant. It also saves the court from the hard choice of either ratifying the results of an imperfect process or imposing on the union the burden of a new election. Third, even though the alleged defects have no merit and would not void the election, adjudication before the voting prevents the unsettled legal issue from distorting the process or clouding its outcome. Counting the ballots ends the contest and brings stability, instead of ushering in an extended period of uncertainty created by litigation" (Ibid., pp. 1244-1245).

Moreover, even under state law, the courts have frequently refused to upset an election already held where the complaining member had an opportunity to, but did not take advantage of, a pre-election remedy. *Ford* v. *Curran*, 36 L. R. R. M. 2407 (N. Y. Sup. Ct., 1955; not otherwise reported), is typical of such cases. There the court indicated that had relief been sought earlier, it would have granted it, but that it would not disturb an election already completed. It said that "A person in her position could not sit back and await the outcome of the election and then come into this court and get the extreme relief she seeks."

This bears out the observation that ' Through the cases runs a visible judicial reluctance to impose on the union the financial burden and the internal disruption which comes with voiding an election and ordering a new one'' (Summers, *Op. cit., supra*, p. 1247). This conclusion was predicated by Prof. Summers on an intensive study of all of the labor cases in the State of New York during a ten year period. He reports in that connection that ''The New York courts will review an election after the balloting, but the limited value of post-election remedies is attested by the fact that only one case has been found in which the court has ordered a new election—and that was one in which the officers who had been reelected were charged and later found guilty of the misuse of union funds'' (Ibid., p. 1247).

As the Act emerged after enactment the statutory scheme provided for three sets of remedies available to the aggrieved member. In the pre-election situation it provided him with the choice of going into the state court and relying on existing rights and remedies under state law or the choice of going into the District Court and availing himself of the new federal rights granted him pursuant to Title I. It was clearly intended by Congress that in the pre-election situation the aggrieved member have the choice of shopping for a forum most congenial to his interests. The Record shows:

> ''Mr. Kennedy. Which would govern, the Federal or the State law? In a case where a member's rights were in question in regard to freedom of assembly, or in regard to an election, which law would govern?
>
> Mr. Holland. I would say that both rights would prevail, and that both courts would be available, and both remedies would be available. Any plenary pro-

> vision against preemption would certainly preserve States' rights as they are, and it would, at the same time, create a new body of effective Federal law.
>
> Mr. Kennedy. In that case, there would be three protections" (*Leg. Hist.*, pp. 1109-1110).

After the election the aggrieved member had only the right to complain of the unfairness of the election to the Secretary of Labor. It was then solely in the discretion of the Secretary whether he would intervene by commencing an action in the District Court under Title IV of the Act.

The entire Congressional scheme evinced an intent to interfere administratively as little as possible with internal union affairs. It gave every encouragement to the practice of union democracy by emphasizing to the member that before the harm was done he had effective remedies available on his own initiative to protect him in his attempt to assert his rights. Throughout the evolution of the Act this intention became progressively more apparent. Congress was concerned to provide the rights and remedies by which union democracy could become a reality even in the most corrupt and mismanaged of unions. It did not evince an intent to put the government squarely in the middle of internal union affairs except after all remedies available without administrative intervention had failed. Congress was aware that judicial remedies had their greatest effectiveness in the pre-election stage. They were largely a dead letter when the election was completed. For Congress to have put the emphasis on Title IV procedures and to have made such proceedings the major source of its reliance, it would, in effect, have made the Secretary the arbiter of crucial issues of internal union politics. Congress sought no such result. It intended that Title IV be rarely applied and then only in situations, in practice, in which all prior attempts at remedy had failed. It was for this reason that

it did not make any specific infringement, or group of specific infringements of members' rights (except the failure to hold a timely election) the standard for judicial relief under Title IV. It limited such relief to the situation in which it could show by a preponderance of the evidence that the infringements complained of may have affected the outcome of the election. Admittedly, this is an almost insuperable obstacle to overcome. How can a member deprived of his right to nominate a candidate for office, for example, demonstrate to a court that had he been allowed to do so his candidate would probably have been elected or the incumbent defeated? In only the rarest instance can one reasonably expect to establish such a conclusion. To all intents and purposes an election concluded is likewise concluded for purposes of Title IV relief.

Congress in giving to the individual member aggrieved the right to bring his own action under Title I was aware that the nomination of a candidate in a union election, as in politics generally, is frequently for a purpose other than actually electing him to office. Most frequently, there are other purposes equally important to the proper internal administration of the union. It has been pointed out that:

> "The test apparently applied by the courts—whether the defect provided the margin of victory—is not only impossible to administer but overlooks one of the most important functions of union elections. Opposition groups in unions frequently have no serious expectation of winning but seek only to voice a protest and perhaps build a base for future elections. Defects in the election blunt the edge of their protest and undermine their base for the future; an uninflated majority solidifies the administration's power and discourages others from attempting to protest or challenge the incumbents. The very lack of a two-party system in most unions

> requires that the strength of the opposition be measured accurately. This is doubly true in elections of international officers where defeating the incumbents is extremely difficult and most elections serve little purpose other than as a focus for protest." (Summers, op. cit., p. 1248)

Predicated on these considerations amongst others Prof. Summers concluded that:

> "... effective enforcement of the statute must rest on pre-election remedies. Challenging an election after it has been conducted has proven too slow and burdensome to be of much practical value, and the availability of such a remedy under the federal statute should not cause the courts to withhold pre-election protection. The state courts have recognized that correcting defects prior to an election gives the members the fair election to which they are entitled; saves the union the costs and disruption of a second election; and lightens the court's responsibility. Congress was aware of these advantages and deliberately preserved pre-election remedies; the courts ought not be niggardly in their use. Only through such remedies can the courts give vital substance to the standards of democratic rights, fair competition, and honesty in union elections." (*Ibid.*, p. 1257)

It has been argued cogently that, in fact, the prime instrument for the enforcement of internal union democracy under federal law, whether the rights derive from Title I or Title IV, should be pursuant to the jurisdiction vested in the District Court by Title I. Certainly, as we have shown, Congress placed its primary emphasis on Title I. The argument, therefore, is that because pre-election remedies are the most effective, because they involve, for the most part, comparatively limited issues capable of rapid determination and equally rapid rectification, because

they cause little or no disruption in the business of the union, because they leave no doubt as to the legitimacy of leadership, because they place no administrative burden on the Secretary and because they add little burden to the business of the District Courts, all federal rights, whether granted under Title I or under Title IV, should be and properly are enforced in Title I proceedings. (Summers, *Pre-emption and the Labor Reform Act—Dual Rights and Remedies*, 22 Ohio S. L. J. 119 (1961)). This, we submit, is the intent spelled out in the debates prior to the enactment of the Act. Nowhere is there spelled out in the debates the intent to make of the rights conferred by Title I, an illusion. Nowhere in the debates is there even an intimation that a right given under Title I was unenforceable if something resembling it or its counterpart was to be found in Title IV. In fact, even the original opponents of the Bill of Rights stressed the efficacy of state court pre-election remedies and by inference expressed the intent of giving primacy to Title I remedies while reserving Title IV only for the most exceptional situation.

That it was the clear intention of Congress to have a liberal construction placed upon Title I in order that maximum effectiveness might be achieved becomes remarkably clear when the debates on the Kuchel Amendment are considered. The debates clearly evidence the Congressional intent to place as much of the power to alleviate infringements of democratic rights in the hands of the individual member as possible. Senator Kuchel, in introducing his compromise version of Title I said with reference to Section 102 of the Act that:

> "... here is one of the major changes in the proposal. The amendment of the Senator from Arkansas provided that the Secretary of Labor might, on behalf of the injured or aggrieved member, have the right

> to litigate the alleged grievance and to seek an injunction or other relief. We believe that giving this type of right to the aggrieved employee member himself is in the interest of justice, and therefore we propose to eliminate from the bill the right of the Secretary of Labor to sue in his behalf." (*Leg. Hist.*, p. 1232).

Senator Clark added:

> "The amendment does five things, and the most important is that it protects the legitimate rights of the rank-and-file members of unions. . . . it takes the Federal bureaucracy out of this bill of rights and leaves its enforcement to union members, aided by the courts" (*Leg. Hist.*, p. 1233).

The Kuchel Amendment had not originally provided for specific protection to the member under the union's constitution and bylaws themselves. Senator Holland in arguing for a broadening of the protection afforded by the Kuchel Amendment in this respect suggested that there be added a provision specifically protecting these rights under state and federal law in addition to the rights granted and protected under Title I itself. In doing so he stated:

> "It seems to me that such a reference should be added, to make complete the showing that nothing is excluded by the inclusion of the rights which have been included, or the details which are included in any of these sections" (*Leg. Hist.*, p. 1233).

The intent to give as liberal an interpretation as possible to Title I cannot reasonably be doubted.

Moreover, it was made clear that that portion of Section 101 (a) (1) which makes the rights granted subject to "reasonable rules and regulations in such organization's

constitution and bylaws" did not signify an intention to dilute the extent of the right conferred. The record shows:

> "That is a procedural provision. It deals with the right of a private or semi private organization to control its meetings by reasonable rules. But in the view of all of us who propose the amendment, it is not believed that this language on the proviso limits any substantive rights, contemplated and defined in the entire title *or otherwise in the bill*" (*Leg Hist.*, p. 1234; italics added)

Given the intent disclosed in the debates it is highly significant that the vote for its approval was 77 to 14 with even its originally strongest opponent, Senator Kennedy, voting for it. Senator Kennedy's original opposition, incidentally, was solely to the fact that as initially presented by Senator McClellan the Bill of Rights was limited in its effectiveness. Senator Kennedy stated:

> "My objection to the amendment is not that I think the union members should not be provided with these rights. My objection is that I think members of unions are provided those rights more satisfactorily by present State law, by the provisions of the bill, and by the Taft-Hartley Act.
>
> I say that because I think the amendment raises the question of preemption. In other words, if the proposal were enacted, the present rather exhaustive remedies provided under the common law of the various States might be wiped out, and only the rights suggested by the Senator from Arkansas would then be available to union members" (*Leg. Hist.*, p. 1108).

With the modifications embodied in the Kuchel Amendment strengthening the hand of the individual unionist as against his union by permitting actions by him predicated on state rights and enforceable by remedies in state

courts, in addition to actions by the member in the District Court, Senator Kennedy's initial objection was obviated and he, himself, supported Title I. The AFL-CIO, too, supported Title I with full awareness of the Congressional intent behind it.

Considering all of the foregoing factors and relating them specifically to the issues involved in the instant litigation, it is interesting to observe that the issues need not *and should not* be formulated in the manner indicated by the Petitioners. They, of course, have their obvious reasons for formulating them as they do. But considered realistically what is the situation? Is it that Title I was designed to allow each member the empty gesture of forwarding a letter to the union marked "nomination" which would upon receipt promptly be thrown into a waste basket, or was it that he was intended to be given the genuine opportunity to make a nomination? We submit, as the Court of Appeals below decided, that it is the latter. Are not the restrictions entitled "eligibility" in reality the standards to be met in order to qualify as a nominator? This is precisely what they are. As such they constitute a naked and absolute infringement of the right to nominate candidates specifically granted by Title I and over which the District Court is specifically given jurisdiction. If, incidentally, they also constitute a violation of the right to have a "reasonable opportunity" to nominate candidates under Title IV, shall they go unprotected in this action because they have a double protection in the statute?

Conclusion.

For the foregoing reasons, and for the reasons set forth in the brief for the Respondents, the judgment of the Court of Appeals below should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 17.

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Petitioner,

against

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

PETITION FOR REHEARING.

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Now come Raymond H. Harvey, Herman Shapiro and John Galletta, each of them individually and on behalf of all other persons similarly situated, Respondents, and respectfully pray the Court to grant a rehearing in this cause.

The Court's decision rests upon the view that, because Section 402 of the Labor Reform Act provides an administrative remedy by which (in certain unusual circumstances) the results of an *already completed* election may be set aside, it must follow that union members are foreclosed from bringing suit under Title I to protect their democratic rights in elections *yet to be conducted*. In obedience to that view, the Court gives a stingy construc-

tion to Section 101(a)(1) and emasculates that section's guarantee of equal, democratic rights (slip opinion, page 5).

Specifically, Section 101(a)(1) guarantees to every member of a labor organization the equal rights to nominate candidates, to vote, etc., subject to reasonable rules and regulations in such organization's constitution and bylaws. The Court's construction of that section destroys the substantive rights, leaving only the qualifying adjective, "equal." As if the assertion, by the framers of the Declaration of Independence, that "all men are endowed . . . with certain inalienable rights" were to be construed as asserting nothing more than inalienability.

But the smile cannot replace the Cheshire cat. Congress added Title I, the "Bill of Rights of Members of Labor Organizations," to what is now the Labor Reform Act in order to protect union members' substantive, democratic *rights*, because it believed that Section 402, standing alone, did not provide adequate protection for them. It sought to provide a direct, private, civil remedy independent of Section 402 for the infringement of those rights. It is that remedy which the respondent trade unionists invoke here. Respondents ask the courts to invalidate certain restrictions which are in fact destructive of their Section 101(a)(1) rights to nominate candidates, so that they and their fellow-members will not be barred from participating democratically in future elections of their union.

By declaring that such a suit may not be maintained, this Court rules that the substantive rights of electoral participation guaranteed to every union member by Section 101(a)(1) may not be protected except (under Section 402) retroactively and in the discretion of the Secretary of Labor. A corollary to that ruling is that the substantive

rights of *non*-electoral participation also guaranteed by Section 101(a)(1) (the rights to vote in referendums, to attend meetings, to participate in deliberations) may not be protected at all.

The Court's decision thus undercuts the "pervading premise" of both Title I and Title IV: namely, the premise "that there should be full and active participation by the rank and file in the affairs of the union." *American Federation of Musicians* v. *Wittstein* (No. 27, decided December 7, 1964; slip opinion, page 12), 33 LW 4031, 4035. The Court permits a union officialdom to suppress the membership's rights of democratic participation so long as it suppresses them "equally," thus heightening the officialdom's actual *in*equality *vis a vis* the rank and file. The pretense of equality in such a situation is, of course, spurious. *Cf. McLaughlin* v. *Florida* (No. 11, decided December 7, 1964), 33 LW 4035, and the line of "separate but equal" cases cited therein.

The Court undercuts the "pervading premise" of Titles I and IV and emasculates Section 101(a)(1) in apparent deference to that wooden dogma of "substantive symmetry" which it has, in analogous situations, rejected. *Cf. NLRB* v. *Radio Engineers*, 364 US 573, 584-585. In *International Longshoremen's Union* v. *Juneau Spruce Corp.*, 342 US 237, 244, the Court was confronted with the separate statutory provision (in Titles I and III of the Labor Management Relations Act of 1947) of two separate remedies for the same misconduct, one an administrative remedy, and the other a remedy by private, civil suit. The Court held the two remedies to be separate and independent of each other. The fact that the administrative remedy was conditioned upon a preliminary administrative determination was held in that case to be "only a limitation on administrative power" and not in any way a limitation or con-

dition upon the exercise of the private, civil remedy. And *cf. Smith* v. *Evening News,* 371 US 195.

II.

The Court says (slip opinion, page 6), "Section 402 of Title IV, as has been pointed out, sets up an *exclusive method for protecting Title IV rights,* by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of violations of Title IV." (Emphasis added.) But in fact Section 402 merely sets up an exclusive method for challenging the results of *elections already conducted.*

The only reference in Title IV to "exclusivity" resides in the last sentence of Section 403, which makes the Section 402 remedy the exclusive method for challenging elections already conducted. The preceding (second) sentence of Section 403 makes its explicitly clear that *nothing* in Title IV is intended to exclude separate and independent methods for protecting union members' electoral rights in regard to elections yet to be conducted. It would thus appear to be beyond dispute that the existence of the Section 402 remedy does *not* exclude a State court from protecting "Title IV rights" in regard to elections yet to be conducted. *Cf. Beiso* v. *Robilotto* (Sup. Ct., N. Y., 1960), 26 Misc. 2d 137. How "exclusive," then, can the Section 402 procedure be?

Electoral rights can be protected only prospectively. Section 402, having no prospective application, does not pretend to protect union members' "Title IV rights" but merely uses those rights as a gauge for determining the degree of electoral fraud that has been committed in a specific, completed election. Title I, on the other hand, seeks to protect electoral and other rights. It seeks to free

union members from the fetters and restrictions placed upon their rights of democratic participation in their unions' affairs. The relevant congressional policy was enunciated a generation ago by Senator Robert Wagner, Sr.: "Simple justice commands that we unfetter the worker in his effort to achieve his goal." 75 Cong. Rec. 4918 (1932).

III.

The Court says (slip opinion, page 6), "It is apparent that Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest." But Congress sought to utilize that "special knowledge and discretion" only for the specialized and restricted purpose of determining which election results, from among all those election results tainted to some degree or other by Section 401 violations, should be upset and re-run.

Congress decided *not* to allow the Secretary's "special knowledge" or "discretion" to intrude upon the protection of union members' democratic rights. Congress knew that if union members' democratic rights were to be protected only in the discretion of the Secretary they would evaporate. Compare: *Beck* v. *Ohio*, (No. 12, decided November 23, 1964; slip opinion, page 9), 33 LW 4015, 4017. It believed that allowing union members to bring suit directly to protect their democratic rights was (as Senator Kuchel expressed it) "in the interest of justice." Leg. Hist. 1232. For that reason, the "Kuchel Substitute" (the present Title I) excluded the Secretary's discretion from the protection or determination of union members' rights. As Senator Clark (one of its co-sponsors) pointed out, "it takes the Federal bureaucracy out of this bill of rights and leaves its enforcement to union members, aided by the courts." Leg. Hist. 1233.

Nor is it Congress's policy to leave union members' electoral rights unprotected as a means of allowing wider scope to the Secretary's "special knowledge and discretion" after each election is completed. Such a policy would be roughly equivalent to telling children *not* to eat an apple a day lest it keep the doctor (with his special knowledge and discretion) away. Instead, Congress affirmatively provided protection for union members' electoral and other democratic rights by adding Title I to the Kennedy-Ervin bill. Title I, in short, provides the preventive medicine which (hopefully) will someday keep the Secretary of Labor away from the unions' internal affairs.

IV.

The Court says (slip opinion, page 4), "But Title IV, not Title I, sets standards for eligibility and qualifications of candidates and officials. . . ." But the fact is that both titles set precisely the same standard. Both titles provide that the restrictions, 'aken together, upon the exercise of any guaranteed electoral right must not unreasonably restrict the exercise of that right. Thus the Section 401(e) guarantee of the right of candidacy "subject to . . . reasonable qualifications uniformly imposed" and the Section 101(a)(1) guarantee of the right to nominate candidates "subject to reasonable rules and regulations" are essentially of a piece.

Obviously, the restrictions that impinge upon the free exercise of any specific electoral right are of different kinds. But it is the totality of restrictions upon any specific right that is relevant. If that totality unreasonably restricts the exercise of the right it fails to meet the legislative standard; if it does so reasonably, it meets the test.

Among the totality of restrictions bearing upon the right to nominate candidates, any and all eligibility require-

ments are necessarily included. Section 101(a)(1)'s requirement, that the "rules and regulations" to which the exercise of the right to nominate candidates is subject must be "reasonable," obviously refers to a totality of "rules and regulations" that includes eligibility requirements. Like Shakespeare's rose, the relevance of a restriction does not depend upon its name. It can only follow that eligibility requirements are as much a "Title I matter" as a "Title IV matter," and that neither title has predominance over the other with regard to them.

V.

The Court's decision overlooks the distinction between reasonable restriction upon the exercise of a right and total deprivation of that right. Thus the fact-situation presented in *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (3d Cir.) cert. den. 371 US 823, the case on the basis of which certiorari was petitioned for, and the fact-situation alleged in the instant complaint have become confused.

Mamula involved an eligibility rule barring only one person—Mamula himself—from *being* nominated. All members, including Mamula, were enabled to nominate any member other than Mamula. The result, of course, was that the members' rights to nominate candidates were not at all unreasonably restricted.

But in the instant case, the respondents (and most of their fellow, rank-and-file members) are totally barred from nominating candidates. Here, then, is no reasonable restriction upon their exercise of the nominating right; here is total deprivation of that right. Quite correctly, the Court of Appeals found the combination of restrictions which destroys the members' rights to nominate candidates to be so unreasonable that they would have been invalid even at common law; Rec. 123. But an examination of the

Court's opinion indicates that the Court, in its consideration of the instant case, confused the instant fact-situation with the *Mamula* fact-situation. And thus the clear distinction between reasonable and unreasonable regulation (*cf. United States* v. *Witkovitch*, 353 US 194), which is explicit in Section 101(a)(1), became lost.

A. Thus the Court says (slip opinion, page 4), "The result of [respondents'] allegations here, however, is an attempt to sweep into the ambit of their right to sue in federal court . . . a right to sue if they are not allowed *to nominate anyone they choose* regardless of his eligibility and qualifications under union restrictions." (Emphasis supplied.) But that is only the result of the allegations of the plaintiff in *Mamula*. Respondents in the instant case do not assert any right to nominate anyone they choose; they assert a right to nominate candidates. They do not protest against reasonable eligibility restrictions; they do protest against the total destruction of their rights to nominate candidates.

B. And the Court says (slip opinion, page 4), "And the equal-rights language of §101(a)(1) would have to be stretched far beyond its normal meaning to hold that it guarantees members not just a right to 'nominate candidates,' but a right to nominate *anyone*, without regard to *valid* union rules." (Emphasis supplied.) But that is precisely the point. Respondents ask here that Section 101(a)(1) be construed in what the Court here describes as "its normal meaning." Respondents here assert "just a right to 'nominate candidates.'" It is that right which, under the invalid combination of rules inflicted upon MEBA's members, is denied them. The distinction between the instant case and *Mamula* is the distinction between that

right (the "normal meaning" of Section 101(a)(1)) and the non-existent right "to nominate anyone, without regard to valid union rules."

The Court, in its decision, thus overlooked the fundamental distinction between rules which reasonably restrict the exercise of a right and rules which unreasonably restrict it or totally destroy it. The former was the case in *Mamula;* the latter is the case here. The distinction is so basic to the judicial process as, of itself, to require that the instant decision be fully reconsidered.

VI.

This Petition for Rehearing should be granted, and the case should be set down for reargument on the regular calendar.

Respectfully submitted,

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Certificate of Counsel.

I certify that this petition is presented in good faith and not for delay.

Burton H. Hall

December 1964.